

16B Am. Jur. 2d Constitutional Law XII A Refs.

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Constitutional Law

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XII. Privileges and Immunities of Citizenship

A. In General

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Research References

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 🔑 2860, 2861, 2910, 2912, 2914, 2935, 2942, 2943

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A.L.R. Index, Privileges and Immunities

West's A.L.R. Digest, [Constitutional Law](#) 🔑 2860, 2861, 2910, 2912, 2914, 2935, 2942, 2943

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16B Am. Jur. 2d Constitutional Law § 783

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XII. Privileges and Immunities of Citizenship

A. In General

§ 783. Federal constitutional provisions protecting privileges and immunities

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  2910, 2935

[Article IV of the United States Constitution](#) provides that "[t]he Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States."¹ Furthermore, the 14th Amendment to the Constitution declares that "[n]o State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States."²

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Footnotes

- ¹ U.S. Const. Art. IV, § 2, cl. 1.
² U.S. Const. Amend. XIV, § 1.

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16B Am. Jur. 2d Constitutional Law § 784

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XII. Privileges and Immunities of Citizenship

A. In General

§ 784. State constitutional provisions protecting privileges and immunities distinguished

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  2860, 2861, 2910, 2935

Some state constitutions provide that no citizen may be given privileges or immunities not given to others.¹ These provisions of state constitutions are substantially the same in effect as the Equal Protection Clause of the United States Constitution.² Such state constitutional provisions have been described as being the antithesis of the Privileges and Immunities Clause of the 14th Amendment since the federal provision operates to prevent abridgment by the states of the constitutional rights of citizens of the United States and the state provisions prevent the state from granting special privileges or immunities and exemptions from otherwise common burdens.³

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Footnotes

- 1 [Ariz. Const. Art. II, § 13](#) ("No law shall be enacted granting to any citizen, class of citizens, or corporation other than municipal, privileges or immunities which, upon the same terms, shall not equally belong to all citizens or corporations."); [Ind. Const. art. 1, § 23](#); [Wash. Const. Art. I, § 12](#).
- 2 [Chavez v. Brewer](#), 222 Ariz. 309, 214 P.3d 397 (Ct. App. Div. 1 2009); [State v. Thorne](#), 129 Wash. 2d 736, 921 P.2d 514 (1996).
- 3 [§ 914](#).

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16B Am. Jur. 2d Constitutional Law § 785

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XII. Privileges and Immunities of Citizenship

A. In General

§ 785. Definition of privileges and immunities

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  2910, 2914, 2935, 2942, 2943

The United States Constitution does not define the term "privileges and immunities,"¹ and the U.S. Supreme Court has never undertaken to give any exact or comprehensive definition of these words, but has adopted the plan of leaving their meaning to be determined in each case upon a view of the particular rights asserted and denied therein.² It has been decided, however, that the words "immunity" and "privilege" are synonymous³ or nearly so.⁴ "Privilege" signifies a peculiar advantage, exemption, or immunity; and "immunity" signifies an exemption or a privilege.⁵

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Footnotes

- ¹ [Minor v. Happersett](#), 88 U.S. 162, 22 L. Ed. 627, 1874 WL 17301 (1874).
- ² [Colgate v. Harvey](#), 296 U.S. 404, 56 S. Ct. 252, 80 L. Ed. 299, 102 A.L.R. 54 (1935) (overruled in part on other grounds by, [Madden v. Commonwealth of Kentucky](#), 309 U.S. 83, 60 S. Ct. 406, 84 L. Ed. 590, 125 A.L.R. 1383 (1940)).
- ³ [Conner v. Elliott](#), 59 U.S. 591, 18 How. 591, 15 L. Ed. 497, 1855 WL 8210 (1855).
- ⁴ [Sacramento Orphanage & Children's Home v. Chambers](#), 25 Cal. App. 536, 144 P. 317 (3d Dist. 1914).
- ⁵ [Sacramento Orphanage & Children's Home v. Chambers](#), 25 Cal. App. 536, 144 P. 317 (3d Dist. 1914).

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16B Am. Jur. 2d Constitutional Law XII B Refs.

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XII. Privileges and Immunities of Citizenship

B. Privileges and Immunities of Citizens of the Several States: Protection Guaranteed by Article IV of the Federal Constitution

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Research References

West's Key Number Digest

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A.L.R. Index, Privileges and Immunities

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16B Am. Jur. 2d Constitutional Law § 786

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XII. Privileges and Immunities of Citizenship

B. Privileges and Immunities of Citizens of the Several States: Protection Guaranteed by Article IV of the Federal Constitution

1. In General

§ 786. Purpose of Privileges and Immunities Clause of Article IV

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 🔑 2936

The purpose of the Privileges and Immunities Clause of [Article IV of the United States Constitution](#)¹ is to fuse into one nation a collection of independent, sovereign states,² or to strongly constitute the citizens of the United States as one people,³ by placing the citizens of each state on the same footing with citizens of other states, so far as the advantages resulting from citizenship in those states are concerned.⁴ Among its principal goals are the promotion of national economic unity, the elimination of protectionist burdens on interstate commerce, and the prevention of discrimination by states against citizens of other states.⁵

[Article IV](#) confers on the citizens of the several states a general citizenship and all the privileges and immunities that the citizens of any state would be entitled to under like circumstances.⁶ It ensures to a citizen of one state who ventures into a second state the same privileges that the citizens of the second state enjoy.⁷ Its purpose is the outlawing of statutory classifications based on the fact of noncitizenship unless there is something to indicate that noncitizens constitute a peculiar source of evil at which the statute is aimed.⁸ Hence, it is intended to prevent discrimination by the several states against citizens of other states in favor of their own⁹ in respect of the fundamental privileges of citizenship.¹⁰ It is not intended to give noncitizens of a state greater privileges than its own citizens, and it does not exempt noncitizens of a state exercising privileges therein from any liability that the exercise of such privileges would impose on citizens of the state who exercise them.¹¹

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Footnotes

- 1 U.S. Const. Art. IV, § 2, cl. 1.
- 2 *Toomer v. Witsell*, 334 U.S. 385, 68 S. Ct. 1156, 92 L. Ed. 1460 (1948); *Culp v. Madigan*, 270 F. Supp. 3d 1038 (C.D. Ill. 2017), *aff'd*, 921 F.3d 646 (7th Cir. 2019).
- 3 *Lunding v. New York Tax Appeals Tribunal*, 522 U.S. 287, 118 S. Ct. 766, 139 L. Ed. 2d 717 (1998); *Clement v. Durban*, 147 A.D.3d 39, 43 N.Y.S.3d 515 (2d Dep't 2016), *aff'd*, 32 N.Y.3d 337, 91 N.Y.S.3d 342, 115 N.E.3d 614 (2018), *cert. denied*, 139 S. Ct. 2649, 204 L. Ed. 2d 285 (2019).
- 4 *Lunding v. New York Tax Appeals Tribunal*, 522 U.S. 287, 118 S. Ct. 766, 139 L. Ed. 2d 717 (1998); *Schoenefeld v. Schneiderman*, 821 F.3d 273 (2d Cir. 2016); *Jones v. City of Memphis*, 852 F. Supp. 2d 1002 (W.D. Tenn. 2012); *Frey v. Comptroller of Treasury*, 422 Md. 111, 29 A.3d 475 (2011); *Clement v. Durban*, 147 A.D.3d 39, 43 N.Y.S.3d 515 (2d Dep't 2016), *aff'd*, 32 N.Y.3d 337, 91 N.Y.S.3d 342, 115 N.E.3d 614 (2018), *cert. denied*, 139 S. Ct. 2649, 204 L. Ed. 2d 285 (2019).
- 5 *Supreme Court of New Hampshire v. Piper*, 470 U.S. 274, 105 S. Ct. 1272, 84 L. Ed. 2d 205 (1985); *United Bldg. and Const. Trades Council of Camden County and Vicinity v. Mayor and Council of City of Camden*, 465 U.S. 208, 104 S. Ct. 1020, 79 L. Ed. 2d 249 (1984) (stating that Article IV, § 2 encourages a national economy by allowing persons to cross-state lines freely in pursuit of economic gain; it acts primarily as a restraint on state action that interferes with interstate harmony or the development of a national economic union).
- 6 *Colgate v. Harvey*, 296 U.S. 404, 56 S. Ct. 252, 80 L. Ed. 299, 102 A.L.R. 54 (1935) (overruled in part on other grounds by, *Madden v. Commonwealth of Kentucky*, 309 U.S. 83, 60 S. Ct. 406, 84 L. Ed. 590, 125 A.L.R. 1383 (1940)).
- 7 *Zobel v. Williams*, 457 U.S. 55, 102 S. Ct. 2309, 72 L. Ed. 2d 672 (1982); *Toomer v. Witsell*, 334 U.S. 385, 68 S. Ct. 1156, 92 L. Ed. 1460 (1948); *Pollack v. Duff*, 793 F.3d 34 (D.C. Cir. 2015); *Cohen v. Rhode Island Turnpike and Bridge Authority*, 775 F. Supp. 2d 439, 83 A.L.R.6th 739 (D.R.I. 2011).
- 8 *Toomer v. Witsell*, 334 U.S. 385, 68 S. Ct. 1156, 92 L. Ed. 1460 (1948); *Kleinsmith v. Shurtleff*, 571 F.3d 1033 (10th Cir. 2009); *McBurney v. Cuccinelli*, 780 F. Supp. 2d 439 (E.D. Va. 2011), *aff'd*, 667 F.3d 454 (4th Cir. 2012), *aff'd*, 569 U.S. 221, 133 S. Ct. 1709, 185 L. Ed. 2d 758 (2013).
- 9 *National Ass'n for the Advancement of Multijurisdiction Practice v. Berch*, 773 F.3d 1037 (9th Cir. 2014).
- 10 *Whitfield v. State of Ohio*, 297 U.S. 431, 56 S. Ct. 532, 80 L. Ed. 778 (1936).
- 11 *Shaffer v. Carter*, 252 U.S. 37, 40 S. Ct. 221, 64 L. Ed. 445 (1920).

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16B Am. Jur. 2d Constitutional Law § 787

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XII. Privileges and Immunities of Citizenship

B. Privileges and Immunities of Citizens of the Several States: Protection Guaranteed by Article IV of the Federal Constitution

1. In General

§ 787. Effect of Privileges and Immunities Clause of Article IV

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  2935, 2936

The Privileges and Immunities Clause of [Article IV of the United States Constitution](#),¹ by conferring on the citizens of the several states all the privileges and immunities that the citizens of any state would be entitled to under like circumstances,² is, in effect, an equal protection clause for nonresidents.³ The guarantee to the citizens of each state contained in [Article IV](#), however, implies no concession by one state to the laws of any other state and does not impart any extraterritorial vigor to the laws of any state.⁴ It does not make the privileges and immunities enjoyed by the citizens of one state under the constitution and laws of that state the measure of the privileges and immunities to be enjoyed as a matter of right by citizens of another state under its constitution and laws.⁵ It does not secure to a citizen leaving one's home state and entering another state special privileges that the citizen enjoyed under the laws of that citizen's home state.⁶ In other words, [Article IV](#) does not have the effect of allowing citizens to carry over to their new residence privileges and immunities of their prior state of residence, but rather limits the capacity of other states to treat such citizens differently from how they treat their own citizens.⁷

The Privileges and Immunities Clause of [Article IV](#) does not infuse citizens with new and independent rights.⁸ The [Article IV](#) clause merely establishes a norm of comity⁹ without specifying the particular subjects as to which the citizens of one state coming within the jurisdiction of another are guaranteed equality of treatment.¹⁰

Footnotes

- 1 U.S. Const. Art. IV, § 2, cl. 1.
- 2 § 786.
- 3 Taylor v. Conta, 106 Wis. 2d 321, 316 N.W.2d 814 (1982).
As to equal protection, generally, see §§ 817 to 932.
- 4 Pembina Consol. Silver Mining & Milling Co. v. Com. of Pennsylvania, 125 U.S. 181, 8 S. Ct. 737, 31 L. Ed. 650 (1888).
- 5 McKane v. Durston, 153 U.S. 684, 14 S. Ct. 913, 38 L. Ed. 867 (1894).
- 6 McBurney v. Young, 667 F.3d 454 (4th Cir. 2012), *aff'd*, 569 U.S. 221, 133 S. Ct. 1709, 185 L. Ed. 2d 758 (2013); Galahad v. Weinshienk, 555 F. Supp. 1201 (D. Colo. 1983).
- 7 Romeu v. Cohen, 265 F.3d 118, 1 A.L.R. Fed. 2d 639 (2d Cir. 2001).
- 8 Reinish v. Clark, 765 So. 2d 197 (Fla. 1st DCA 2000).
- 9 McBurney v. Young, 667 F.3d 454 (4th Cir. 2012), *aff'd*, 569 U.S. 221, 133 S. Ct. 1709, 185 L. Ed. 2d 758 (2013); Marilley v. Bonham, 844 F.3d 841 (9th Cir. 2016); Reinish v. Clark, 765 So. 2d 197 (Fla. 1st DCA 2000); Dunn v. Idaho State Tax Commission, 162 Idaho 673, 403 P.3d 309 (2017).
- 10 McBurney v. Young, 667 F.3d 454 (4th Cir. 2012), *aff'd*, 569 U.S. 221, 133 S. Ct. 1709, 185 L. Ed. 2d 758 (2013); Reinish v. Clark, 765 So. 2d 197 (Fla. 1st DCA 2000); Dunn v. Idaho State Tax Commission, 162 Idaho 673, 403 P.3d 309 (2017).

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XII. Privileges and Immunities of Citizenship

B. Privileges and Immunities of Citizens of the Several States: Protection Guaranteed by Article IV of the Federal Constitution

1. In General

§ 788. Entities subject to Privileges and Immunities Clause of Article IV

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  2935

The Privileges and Immunities Clause of [Article IV of the United States Constitution](#)¹ applies to states² and state action,³ preventing a state from imposing unreasonable burdens on nonresidents.⁴ It also applies to municipalities⁵ and municipal ordinances.⁶ It does not, however, constrain the powers of the federal government.⁷ The prohibitions of [Article IV](#) also do not apply to any actions or conduct of private individuals.⁸

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Footnotes

- 1 U.S. Const. Art. IV, § 2, cl. 1.
- 2 [Daly v. Harris](#), 215 F. Supp. 2d 1098 (D. Haw. 2002), *aff'd*, 117 Fed. Appx. 498 (9th Cir. 2004).
- 3 [Reitz v. Kipper](#), 674 F. Supp. 2d 1194 (D. Nev. 2009).
- 4 [Clement v. Durban](#), 32 N.Y.3d 337, 91 N.Y.S.3d 342, 115 N.E.3d 614 (2018), *cert. denied*, 139 S. Ct. 2649, 204 L. Ed. 2d 285 (2019).
- 5 [Daly v. Harris](#), 215 F. Supp. 2d 1098 (D. Haw. 2002), *aff'd*, 117 Fed. Appx. 498 (9th Cir. 2004).
- 6 [United Bldg. and Const. Trades Council of Camden County and Vicinity v. Mayor and Council of City of Camden](#), 465 U.S. 208, 104 S. Ct. 1020, 79 L. Ed. 2d 249 (1984); [Stevenson v. Town of Oyster Bay](#), 433 F. Supp. 2d 263 (E.D. N.Y. 2006).
- 7 [Robinson v. Huerta](#), 123 F. Supp. 3d 30 (D.D.C. 2015).

8 U.S. v. Wheeler, 254 U.S. 281, 41 S. Ct. 133, 65 L. Ed. 270 (1920) (disapproved of on other grounds by, U.S. v. Guest, 383 U.S. 745, 86 S. Ct. 1170, 16 L. Ed. 2d 239 (1966)); U.S. v. Harris, 106 U.S. 629, 1 S. Ct. 601, 27 L. Ed. 290 (1883).

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16B Am. Jur. 2d Constitutional Law § 789

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XII. Privileges and Immunities of Citizenship

B. Privileges and Immunities of Citizens of the Several States: Protection Guaranteed by Article IV of the Federal Constitution

1. In General

§ 789. Test for violation of Privileges and Immunities Clause of Article IV

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  2935, 2944

Cases alleging the violation of the Privileges and Immunities Clause of [Article IV of the United States Constitution](#)¹ require the court to consider whether the state has, in fact, discriminated against nonresidents with regard to privileges and immunities it accords its own citizens, and if so, whether there is sufficient justification for discrimination.² In so doing, the court first looks to see whether the alleged protected right or activity in question is sufficiently basic to the livelihood of the nation as to fall within the purview of [Article IV](#).³ If a challenged restriction deprives nonresidents of a privilege or immunity protected by [Article IV](#), the court will hold it invalid unless there is a substantial reason for the difference in treatment, and the discrimination practiced against nonresidents bears a substantial relationship to the state's objective.⁴

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Footnotes

- 1 U.S. Const. Art. IV, § 2, cl. 1.
- 2 *Connecticut ex rel. Blumenthal v. Crotty*, 346 F.3d 84, 31 A.L.R.6th 763 (2d Cir. 2003); *Minnesota ex rel. Hatch v. Hoeven*, 456 F.3d 826 (8th Cir. 2006).
- 3 *Supreme Court of Virginia v. Friedman*, 487 U.S. 59, 108 S. Ct. 2260, 101 L. Ed. 2d 56 (1988).
As to rights and activities protected by [Article IV](#), generally, see § 793.
- 4 *Lunding v. New York Tax Appeals Tribunal*, 522 U.S. 287, 118 S. Ct. 766, 139 L. Ed. 2d 717 (1998); *Barnard v. Thorstenn*, 489 U.S. 546, 109 S. Ct. 1294, 103 L. Ed. 2d 559 (1989); *Supreme Court of New Hampshire*

v. Piper, 470 U.S. 274, 105 S. Ct. 1272, 84 L. Ed. 2d 205 (1985); Toomer v. Witsell, 334 U.S. 385, 68 S. Ct. 1156, 92 L. Ed. 1460 (1948).

As to justification for deprivation of privileges and immunities protected by [Article IV](#), generally, see § 798.

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XII. Privileges and Immunities of Citizenship

B. Privileges and Immunities of Citizens of the Several States: Protection Guaranteed by Article IV of the Federal Constitution

2. Proper Plaintiffs; Persons Whose Privileges and Immunities Are Protected by Article IV

§ 790. Entities protected by Privileges and Immunities Clause of Article IV, generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 2938 to 2940

The Privileges and Immunities Clause of [Article IV of the United States Constitution](#) speaks in terms of "citizens" being entitled to privileges and immunities.¹ Natural persons and they alone are entitled to the privileges and immunities that [Article IV](#) secures for "citizens."² A partnership,³ the estate of a deceased individual,⁴ an unincorporated association,⁵ a corporation,⁶ a limited liability company,⁷ or any other type of business entity⁸ is not a citizen within the meaning of [Article IV](#).

A state is not a "person" within the meaning of [Article IV](#) and therefore cannot maintain a claim against another state for infringement of privileges and immunities.⁹ A political subdivision¹⁰ or municipal corporation created by a state has no privileges or immunities that it may invoke.¹¹ State officials also cannot assert that their state's enactments deny the state its privileges and immunities.¹²

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Footnotes

- ¹ U.S. Const. Art. IV, § 2, cl. 1.
- ² [Paul v. State of Virginia](#), 75 U.S. 168, 19 L. Ed. 357, 1868 WL 11123 (1868) (overruled in part on other grounds by, [U.S. v. South-Eastern Underwriters Ass'n](#), 322 U.S. 533, 64 S. Ct. 1162, 88 L. Ed. 1440 (1944)).
- ³ [Nutritional Support Services, L.P. v. Miller](#), 826 F. Supp. 467 (N.D. Ga. 1993).

- 4 In re Estate of Hosmer, 11 Ohio App. 3d 24, 462 N.E.2d 1239 (11th Dist. Geauga County 1983).
5 W.C.M. Window Co., Inc. v. Bernardi, 730 F.2d 486 (7th Cir. 1984).
6 Tennessee Wine and Spirits Retailers Association v. Thomas, 139 S. Ct. 2449, 204 L. Ed. 2d 801 (2019);
Western and Southern Life Ins. Co. v. State Bd. of Equalization of California, 451 U.S. 648, 101 S. Ct. 2070,
68 L. Ed. 2d 514 (1981); Lebamoff Enterprises, Inc. v. Rauner, 909 F.3d 847 (7th Cir. 2018); Metropolitan
Washington Chapter v. District of Columbia, 57 F. Supp. 3d 1 (D.D.C. 2014).
7 Aqua Harvesters, Inc. v. New York State Department of Environmental Conservation, 399 F. Supp. 3d 15
(E.D. N.Y. 2019).
8 Council of Ins. Agents ± Brokers v. Viken, 2005 DSD 21, 408 F. Supp. 2d 836 (D.S.D. 2005).
9 Pennsylvania v. New Jersey, 426 U.S. 660, 96 S. Ct. 2333, 49 L. Ed. 2d 124 (1976).
10 Reach Academy for Boys and Girls, Inc. v. Delaware Department of Education, 46 F. Supp. 3d 455, 314
Ed. Law Rep. 693 (D. Del. 2014).
11 Williams v. Mayor and City Council of Baltimore, 289 U.S. 36, 53 S. Ct. 431, 77 L. Ed. 1015 (1933).
12 Durish v. Texas State Bd. of Ins., 817 S.W.2d 764 (Tex. App. Texarkana 1991).

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16B Am. Jur. 2d Constitutional Law § 791

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Constitutional Law

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XII. Privileges and Immunities of Citizenship

B. Privileges and Immunities of Citizens of the Several States: Protection Guaranteed by Article IV of the Federal Constitution

2. Proper Plaintiffs; Persons Whose Privileges and Immunities Are Protected by Article IV

§ 791. Application of Privileges and Immunities Clause of Article IV to nonresidents

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 🔑2938

Although the Privileges and Immunities Clause of [Article IV of the United States Constitution](#)¹ uses the term "citizens," for analytic purposes the terms "citizenship" and "residency" are essentially interchangeable.² Accordingly, although [Article IV](#) speaks to citizens of other states, practically, it bars discrimination against nonresidents.³ Thus, for the Privileges and Immunities Clause of [Article IV](#) to apply, out-of-state residents must be burdened by discriminatory treatment.⁴

Observation:

Residents of a state are generally citizens of that state, and citizens of a state are usually residents of that state.⁵

Practice Tip:

Merely because a statute is couched in terms of residence, it is not ipso facto outside the scope of the Privileges and Immunities Clause of [Article IV](#).⁶

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Footnotes

- 1 U.S. Const. Art. IV, § 2, cl. 1.
- 2 [United Bldg. and Const. Trades Council of Camden County and Vicinity v. Mayor and Council of City of Camden](#), 465 U.S. 208, 104 S. Ct. 1020, 79 L. Ed. 2d 249 (1984); [Schoenefeld v. Schneiderman](#), 821 F.3d 273 (2d Cir. 2016); [Council of Ins. Agents & Brokers v. Molasky-Arman](#), 522 F.3d 925 (9th Cir. 2008); [Clement v. Durban](#), 32 N.Y.3d 337, 91 N.Y.S.3d 342, 115 N.E.3d 614 (2018), *cert. denied*, 139 S. Ct. 2649, 204 L. Ed. 2d 285 (2019).
- 3 [Taylor v. Rorke](#), 279 N.J. Super. 63, 652 A.2d 207 (App. Div. 1995).
- 4 [Hughes v. City of Cedar Rapids, Iowa](#), 840 F.3d 987 (8th Cir. 2016).
- 5 [Gassies v. Ballon](#), 31 U.S. 761, 8 L. Ed. 573, 1832 WL 3422 (1832).
- 6 [Toomer v. Witsell](#), 334 U.S. 385, 68 S. Ct. 1156, 92 L. Ed. 1460 (1948).

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16B Am. Jur. 2d Constitutional Law § 792

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XII. Privileges and Immunities of Citizenship

B. Privileges and Immunities of Citizens of the Several States: Protection Guaranteed by Article IV of the Federal Constitution

2. Proper Plaintiffs; Persons Whose Privileges and Immunities Are Protected by Article IV

§ 792. Application of Privileges and Immunities Clause of Article IV to citizens of the state whose law is challenged

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  2938

The Privileges and Immunities Clause of [Article IV of the United States Constitution](#)¹ does not protect the citizens of a state against the legislative power of their own state.² The plaintiff's own state of residence thus is not a proper defendant in an [Article IV](#) case.³ Furthermore, a state resident cannot bring an [Article IV](#) claim against a city for discriminating against state residents who do not live in that city.⁴

Observation:

The fact that [Article IV](#) has no application to a citizen of the state whose laws are complained of does not mean that a state has unlimited power to abridge the privileges of its own citizens; instead, courts will look elsewhere for the constitutional infirmity of the policy or regulation.⁵

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Footnotes

- 1 U.S. Const. Art. IV, § 2, cl. 1.
- 2 United Bldg. and Const. Trades Council of Camden County and Vicinity v. Mayor and Council of City of Camden, 465 U.S. 208, 104 S. Ct. 1020, 79 L. Ed. 2d 249 (1984); Roberts v. State, Dept. of Revenue, 162 P.3d 1214 (Alaska 2007).
- 3 Zobel v. Williams, 457 U.S. 55, 102 S. Ct. 2309, 72 L. Ed. 2d 672 (1982); Schulz v. New York State Executive, Pataki, 960 F. Supp. 568 (N.D. N.Y. 1997), judgment aff'd, 162 F.3d 1148 (2d Cir. 1998).
- 4 Stevenson v. Town of Oyster Bay, 433 F. Supp. 2d 263 (E.D. N.Y. 2006).
- 5 Colgate v. Harvey, 296 U.S. 404, 56 S. Ct. 252, 80 L. Ed. 299, 102 A.L.R. 54 (1935) (overruled in part on other grounds by, Madden v. Commonwealth of Kentucky, 309 U.S. 83, 60 S. Ct. 406, 84 L. Ed. 590, 125 A.L.R. 1383 (1940)).

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XII. Privileges and Immunities of Citizenship

B. Privileges and Immunities of Citizens of the Several States: Protection Guaranteed by Article IV of the Federal Constitution

3. Rights and Activities Protected by Article IV

§ 793. Rights and activities protected by Privileges and Immunities Clause of Article IV, generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  2942, 2943

The Privileges and Immunities Clause of [Article IV of the United States Constitution](#)¹ protects those privileges and immunities that are conferred by state citizenship² and are fundamental.³ It applies only to those rights, or privileges and immunities, that bear upon the vitality of the nation as a single entity⁴ and those activities that are sufficiently basic to the livelihood of the nation.⁵ If no fundamental right is implicated, the challenged state action does not fall within the purview of [Article IV](#).⁶

The privileges and immunities protected by [Article IV](#) have not been definitively enumerated,⁷ but as a general matter have been said to include protection by the government, with the right to acquire and possess property of every kind, and to pursue and obtain happiness and safety, subject to such restraints as the government may prescribe for the general good of the whole.⁸ Rights recognized as fundamental under [Article IV](#), and protected thereby, include the right to practice a trade, profession, or common calling;⁹ the right to access the courts;¹⁰ the right to transfer property;¹¹ and the right to obtain medical services.¹² The right to interstate travel,¹³ and the right to be treated as a welcome visitor rather than an unfriendly alien when temporarily present in another state,¹⁴ are also fundamental rights protected by [Article IV](#).

The fundamental rights protected under the Privileges and Immunities Clause of [Article IV](#) are not identical to the fundamental rights protected by other constitutional provisions and cover a much narrower range of activity.¹⁵

Observation:

It sometimes is not necessary for a court to decide whether an asserted right or activity is sufficiently fundamental to come within the protection of [Article IV](#); the court may assume it is and yet uphold the challenged law by finding sufficient justification for it.¹⁶

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Footnotes

- 1 U.S. Const. Art. IV, § 2, cl. 1.
- 2 *Courtney v. Goltz*, 736 F.3d 1152 (9th Cir. 2013).
- 3 *Orion Wine Imports, LLC v. Applesmith*, 412 F. Supp. 3d 1174 (E.D. Cal. 2019); *Democko v. Iowa Dept. of Natural Resources*, 840 N.W.2d 281 (Iowa 2013); *McBurney v. Cuccinelli*, 780 F. Supp. 2d 439 (E.D. Va. 2011), *aff'd*, 667 F.3d 454 (4th Cir. 2012), *aff'd*, 569 U.S. 221, 133 S. Ct. 1709, 185 L. Ed. 2d 758 (2013).
- 4 *Baldwin v. Fish and Game Commission of Montana*, 436 U.S. 371, 98 S. Ct. 1852, 56 L. Ed. 2d 354 (1978); *Council of Ins. Agents & Brokers v. Molasky-Arman*, 522 F.3d 925 (9th Cir. 2008); *Pollack v. Duff*, 793 F.3d 34 (D.C. Cir. 2015); *Peterson v. LaCabe*, 783 F. Supp. 2d 1167 (D. Colo. 2011), *aff'd on other grounds*, 707 F.3d 1197 (10th Cir. 2013); *In re Wheeler*, 433 N.J. Super. 560, 81 A.3d 728 (App. Div. 2013).
- 5 *Supreme Court of Virginia v. Friedman*, 487 U.S. 59, 108 S. Ct. 2260, 101 L. Ed. 2d 56 (1988); *Bach v. Pataki*, 408 F.3d 75 (2d Cir. 2005); *Council of Ins. Agents & Brokers v. Molasky-Arman*, 522 F.3d 925 (9th Cir. 2008); *Jones v. City of Memphis*, 868 F. Supp. 2d 710 (W.D. Tenn. 2012), *aff'd*, 531 Fed. Appx. 709 (6th Cir. 2013); *Peterson v. LaCabe*, 783 F. Supp. 2d 1167 (D. Colo. 2011), *aff'd on other grounds*, 707 F.3d 1197 (10th Cir. 2013).
- 6 *Cohen v. Rhode Island Turnpike and Bridge Authority*, 775 F. Supp. 2d 439, 83 A.L.R.6th 739 (D.R.I. 2011).
- 7 *Baldwin v. Fish and Game Commission of Montana*, 436 U.S. 371, 98 S. Ct. 1852, 56 L. Ed. 2d 354 (1978).
- 8 *U.S. v. Wheeler*, 254 U.S. 281, 41 S. Ct. 133, 65 L. Ed. 270 (1920) (disapproved of on other grounds by, *U.S. v. Guest*, 383 U.S. 745, 86 S. Ct. 1170, 16 L. Ed. 2d 239 (1966)); *Courtney v. Goltz*, 736 F.3d 1152 (9th Cir. 2013).
- 9 § 801.
- 10 § 804.
- 11 *McBurney v. Young*, 667 F.3d 454 (4th Cir. 2012), *aff'd*, 569 U.S. 221, 133 S. Ct. 1709, 185 L. Ed. 2d 758 (2013); *Jones v. City of Memphis*, 868 F. Supp. 2d 710 (W.D. Tenn. 2012), *aff'd*, 531 Fed. Appx. 709 (6th Cir. 2013).
- 12 *Doe v. Bolton*, 410 U.S. 179, 93 S. Ct. 739, 35 L. Ed. 2d 201 (1973); *McBurney v. Young*, 667 F.3d 454 (4th Cir. 2012), *aff'd*, 569 U.S. 221, 133 S. Ct. 1709, 185 L. Ed. 2d 758 (2013); *Jones v. City of Memphis*, 868 F. Supp. 2d 710 (W.D. Tenn. 2012), *aff'd*, 531 Fed. Appx. 709 (6th Cir. 2013).
- 13 *Cohen v. Rhode Island Turnpike and Bridge Authority*, 775 F. Supp. 2d 439, 83 A.L.R.6th 739 (D.R.I. 2011); *Culp v. Madigan*, 270 F. Supp. 3d 1038 (C.D. Ill. 2017), *aff'd*, 921 F.3d 646 (7th Cir. 2019); *Duffy ex rel. Duffy v. Meconi*, 395 F. Supp. 2d 132 (D. Del. 2005); *Thorpe v. State*, 107 P.3d 1064 (Colo. App. 2004).
- 14 *Duffy ex rel. Duffy v. Meconi*, 395 F. Supp. 2d 132 (D. Del. 2005); *Thorpe v. State*, 107 P.3d 1064 (Colo. App. 2004).
- 15 *Jones v. City of Memphis*, 852 F. Supp. 2d 1002 (W.D. Tenn. 2012).

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[Bach v. Pataki, 408 F.3d 75 \(2d Cir. 2005\)](#) (asserted entitlement to a New York handgun carry license assumed, but law restricting licenses for nonresidents upheld).

As to justification for the deprivation of privileges and immunities protected by [Article IV](#), generally, see [§ 798](#).

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16B Am. Jur. 2d Constitutional Law § 794

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XII. Privileges and Immunities of Citizenship

B. Privileges and Immunities of Citizens of the Several States: Protection Guaranteed by Article IV of the Federal Constitution

3. Rights and Activities Protected by Article IV

§ 794. Rights and activities not protected by Privileges and Immunities Clause of Article IV

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  2942, 2943

Certain rights, such as the right to access public information,¹ and the rights to advocate for one's interest and pursue economic interests,² have been held to be not fundamental within the meaning of the Privileges and Immunities Clause of [Article IV of the United States Constitution](#),³ and therefore not protected thereby. Furthermore, certain activities have been held not to be protected privileges and immunities under [Article IV](#) because they relate to the state's ability to function as a sovereign, and include such activities as voting for and holding elective state office.⁴ Residency requirements for such activities are permitted,⁵ and the reasons are obvious.⁶ If a state were to entrust the elective franchise to residents of another state, its sovereignty would not rest upon the will of its own citizens; and if it permitted, its offices to be filled and their functions to be exercised by persons from other states, the state citizens to that extent would not enjoy the right of self-government.⁷

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Footnotes

- ¹ [McBurney v. Young](#), 569 U.S. 221, 133 S. Ct. 1709, 185 L. Ed. 2d 758 (2013).
- ² [McBurney v. Cuccinelli](#), 780 F. Supp. 2d 439 (E.D. Va. 2011), *aff'd*, 667 F.3d 454 (4th Cir. 2012), *aff'd*, 569 U.S. 221, 133 S. Ct. 1709, 185 L. Ed. 2d 758 (2013).
- ³ U.S. Const. Art. IV, § 2, cl. 1.
As to [Article IV](#) protecting only privileges and immunities that are fundamental, see [§ 793](#).

- 4 Supreme Court of New Hampshire v. Piper, 470 U.S. 274, 105 S. Ct. 1272, 84 L. Ed. 2d 205 (1985); Baldwin v. Fish and Game Commission of Montana, 436 U.S. 371, 98 S. Ct. 1852, 56 L. Ed. 2d 354 (1978); Nelson v. Geringer, 295 F.3d 1082 (10th Cir. 2002).
- 5 Supreme Court of New Hampshire v. Piper, 470 U.S. 274, 105 S. Ct. 1272, 84 L. Ed. 2d 205 (1985); Baldwin v. Fish and Game Commission of Montana, 436 U.S. 371, 98 S. Ct. 1852, 56 L. Ed. 2d 354 (1978); Nelson v. Geringer, 295 F.3d 1082 (10th Cir. 2002).
- 6 Steed v. Harvey, 18 Utah 367, 54 P. 1011 (1898).
- 7 Steed v. Harvey, 18 Utah 367, 54 P. 1011 (1898).

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XII. Privileges and Immunities of Citizenship

B. Privileges and Immunities of Citizens of the Several States: Protection Guaranteed by Article IV of the Federal Constitution

4. Prohibited Discrimination

§ 795. Discrimination as to privileges and immunities under Article IV, generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  2935, 2944

For there to be a claim asserting violation of the Privileges and Immunities Clause of [Article IV of the United States Constitution](#),¹ the state must have discriminated against nonresidents with regard to protected privileges and immunities.² However, disparate treatment, without an assertion that this treatment hinders the formation, the purpose, or the development of a single union is insufficient to establish a violation.³ It is a protectionist purpose, and not disparate effects alone, that identifies the sort of discrimination prohibited by [Article IV](#).⁴

A complete bar on protected rights or activities is not required to establish prohibited discrimination under [Article IV](#); the discrimination may take the form of, for example, a restriction on the percentage of nonresidents that may be employed on a project⁵ or restrictions on a geographic region in which an activity is permitted to nonresidents.⁶

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Footnotes

- ¹ U.S. Const. Art. IV, § 2, cl. 1.
- ² [Bach v. Pataki](#), 408 F.3d 75 (2d Cir. 2005); [Minnesota ex rel. Hatch v. Hoeven](#), 456 F.3d 826 (8th Cir. 2006); [Russell v. Hug](#), 275 F.3d 812 (9th Cir. 2002).
- ³ As to protected privileges and immunities, generally, see [§ 793](#).
- ⁴ [Thorpe v. State](#), 107 P.3d 1064 (Colo. App. 2004).

- 4 [Schoenefeld v. Schneiderman](#), 821 F.3d 273 (2d Cir. 2016).
- 5 [United Bldg. and Const. Trades Council of Camden County and Vicinity v. Mayor and Council of City of Camden](#), 465 U.S. 208, 104 S. Ct. 1020, 79 L. Ed. 2d 249 (1984).
- 6 [Connecticut ex rel. Blumenthal v. Crotty](#), 346 F.3d 84, 31 A.L.R.6th 763 (2d Cir. 2003).

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XII. Privileges and Immunities of Citizenship

B. Privileges and Immunities of Citizens of the Several States: Protection Guaranteed by Article IV of the Federal Constitution

4. Prohibited Discrimination

§ 796. Discrimination not express; laws with discriminatory impact as violating Article IV

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  2935, 2944

If the practical effect of a state provision is to discriminate based on citizenship or residence, the provision may violate the Privileges and Immunities Clause of [Article IV of the United States Constitution](#),¹ just as if the provision contained express language of discrimination.² A facially neutral law thus may violate [Article IV](#), if it is a proxy for differential treatment or discriminates in practical effect against nonresidents.³ While [Article IV](#) may be applied to classifications that are but proxies for differential treatment against out-of-state residents, the U.S. Supreme Court has not ruled on whether it prohibits every classification with the practical effect of discriminating against such residents.⁴ Nonetheless, it can be said that the absence of an express statement in a law or regulation identifying out-of-state citizenship as a basis for disparate treatment is not a sufficient basis for rejecting a claim under [Article IV](#).⁵

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Footnotes

- ¹ U.S. Const. Art. IV, § 2, cl. 1.
- ² [Hillside Dairy Inc. v. Lyons](#), 539 U.S. 59, 123 S. Ct. 2142, 156 L. Ed. 2d 54 (2003); [Chalker v. Birmingham & N. W. Ry. Co.](#), 249 U.S. 522, 39 S. Ct. 366, 63 L. Ed. 748 (1919).
- ³ [Dairy v. Bonham](#), 25 F. Supp. 3d 1284 (N.D. Cal. 2014).
- ⁴ [Hillside Dairy Inc. v. Lyons](#), 539 U.S. 59, 123 S. Ct. 2142, 156 L. Ed. 2d 54 (2003).

5 [Hillside Dairy Inc. v. Lyons, 539 U.S. 59, 123 S. Ct. 2142, 156 L. Ed. 2d 54 \(2003\).](#)

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XII. Privileges and Immunities of Citizenship

B. Privileges and Immunities of Citizens of the Several States: Protection Guaranteed by Article IV of the Federal Constitution

4. Prohibited Discrimination

§ 797. Laws affecting both residents and nonresidents as discriminatory under Article IV

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  2938, 2944

If a state statute or regulation imposes identical requirements on residents and nonresidents alike and has no discriminatory effect on nonresidents, it does not violate the Privileges and Immunities Clause of Article IV¹ of the United States Constitution.² However, a law is not immune from review under Article IV at the behest of out-of-state residents merely because some in-state residents are similarly disadvantaged, as would be the case when a city ordinance creates a preference for residents of the city.³

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Footnotes

- ¹ U.S. Const. Art. IV, § 2, cl. 1.
- ² *Tolchin v. Supreme Court of the State of N.J.*, 111 F.3d 1099 (3d Cir. 1997).
- ³ *United Bldg. and Const. Trades Council of Camden County and Vicinity v. Mayor and Council of City of Camden*, 465 U.S. 208, 104 S. Ct. 1020, 79 L. Ed. 2d 249 (1984).

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XII. Privileges and Immunities of Citizenship

B. Privileges and Immunities of Citizens of the Several States: Protection Guaranteed by Article IV of the Federal Constitution

5. Justification for Discrimination

§ 798. Justification for discrimination under Article IV, generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 🔑2945

The Privileges and Immunities Clause of [Article IV of the United States Constitution](#)¹ is not an absolute,² in that while it bars discrimination against citizens of other states when there is no substantial reason for such discrimination beyond the mere fact that they are citizens of other states,³ it does not preclude disparity of treatment in the many situations in which there are perfectly valid independent reasons for it.⁴ When a protected privilege or immunity is implicated, the state may defeat a challenge under [Article IV](#) by showing a substantial reason⁵ or sufficient justification⁶ for the discrimination, that is, something to indicate that noncitizens constitute a peculiar source of the evil at which the statute is aimed.⁷ The fact that nonresidents merely contribute to an alleged problem to some extent is not sufficient.⁸ The state must also show, in order to defeat an [Article IV](#) challenge, that the discrimination practiced against nonresidents bears a substantial relationship to the state's objectives.⁹ Thus, the state, in order to establish that a statute discriminating against nonresidents does not violate [Article IV](#), must demonstrate a reasonable fit between the statute and the evil to be avoided; in other words, the degree of discrimination exacted must be substantially related to the threatened danger.¹⁰

In deciding whether the discrimination bears a substantial relation to the state's objectives, a court considers, among other things, whether less restrictive means of regulation are available.¹¹ The inquiry must be conducted with due regard for the principle that the states should have considerable leeway in analyzing local evils and in prescribing appropriate cures.¹²

Footnotes

- 1 U.S. Const. Art. IV, § 2, cl. 1.
- 2 *Lunding v. New York Tax Appeals Tribunal*, 522 U.S. 287, 118 S. Ct. 766, 139 L. Ed. 2d 717 (1998); *Council of Ins. Agents & Brokers v. Molasky-Arman*, 522 F.3d 925 (9th Cir. 2008); *Coffman v. Williamson*, 2015 CO 35, 348 P.3d 929 (Colo. 2015).
- 3 *Lunding v. New York Tax Appeals Tribunal*, 522 U.S. 287, 118 S. Ct. 766, 139 L. Ed. 2d 717 (1998); *National Ass'n for the Advancement of Multijurisdiction Practice v. Castille*, 799 F.3d 216 (3d Cir. 2015); *Hughes v. City of Cedar Rapids, Iowa*, 840 F.3d 987 (8th Cir. 2016); *Council of Ins. Agents & Brokers v. Molasky-Arman*, 522 F.3d 925 (9th Cir. 2008).
- 4 *Lunding v. New York Tax Appeals Tribunal*, 522 U.S. 287, 118 S. Ct. 766, 139 L. Ed. 2d 717 (1998); *Council of Ins. Agents & Brokers v. Molasky-Arman*, 522 F.3d 925 (9th Cir. 2008); *McBurney v. Cuccinelli*, 780 F. Supp. 2d 439 (E.D. Va. 2011), *aff'd*, 667 F.3d 454 (4th Cir. 2012), *aff'd*, 569 U.S. 221, 133 S. Ct. 1709, 185 L. Ed. 2d 758 (2013); *Coffman v. Williamson*, 2015 CO 35, 348 P.3d 929 (Colo. 2015); *Clement v. Durban*, 147 A.D.3d 39, 43 N.Y.S.3d 515 (2d Dep't 2016), *aff'd*, 32 N.Y.3d 337, 91 N.Y.S.3d 342, 115 N.E.3d 614 (2018), *cert. denied*, 139 S. Ct. 2649, 204 L. Ed. 2d 285 (2019).
- 5 *Schoenefeld v. Schneiderman*, 821 F.3d 273 (2d Cir. 2016); *Lebamoff Enterprises, Inc. v. Rauner*, 909 F.3d 847 (7th Cir. 2018); *Peterson v. LaCabe*, 783 F. Supp. 2d 1167 (D. Colo. 2011), *aff'd on other grounds*, 707 F.3d 1197 (10th Cir. 2013); *Clement v. Durban*, 32 N.Y.3d 337, 91 N.Y.S.3d 342, 115 N.E.3d 614 (2018), *cert. denied*, 139 S. Ct. 2649, 204 L. Ed. 2d 285 (2019).
- 6 *Hicklin v. Orbeck*, 437 U.S. 518, 98 S. Ct. 2482, 57 L. Ed. 2d 397 (1978); *Toomer v. Witsell*, 334 U.S. 385, 68 S. Ct. 1156, 92 L. Ed. 1460 (1948); *Bach v. Pataki*, 408 F.3d 75 (2d Cir. 2005); *Democko v. Iowa Dept. of Natural Resources*, 840 N.W.2d 281 (Iowa 2013).
- 7 *Hicklin v. Orbeck*, 437 U.S. 518, 98 S. Ct. 2482, 57 L. Ed. 2d 397 (1978); *Toomer v. Witsell*, 334 U.S. 385, 68 S. Ct. 1156, 92 L. Ed. 1460 (1948); *Bach v. Pataki*, 408 F.3d 75 (2d Cir. 2005); *Peterson v. LaCabe*, 783 F. Supp. 2d 1167 (D. Colo. 2011), *aff'd on other grounds*, 707 F.3d 1197 (10th Cir. 2013); *Metropolitan Washington Chapter v. District of Columbia*, 57 F. Supp. 3d 1 (D.D.C. 2014).
- 8 *A.L. Blades & Sons, Inc. v. Yerusalim*, 121 F.3d 865 (3d Cir. 1997).
- 9 *Lebamoff Enterprises, Inc. v. Rauner*, 909 F.3d 847 (7th Cir. 2018); *Clement v. Durban*, 32 N.Y.3d 337, 91 N.Y.S.3d 342, 115 N.E.3d 614 (2018), *cert. denied*, 139 S. Ct. 2649, 204 L. Ed. 2d 285 (2019).
- 10 *Peterson v. LaCabe*, 783 F. Supp. 2d 1167 (D. Colo. 2011), *aff'd on other grounds*, 707 F.3d 1197 (10th Cir. 2013).
- 11 *Barnard v. Thorstenn*, 489 U.S. 546, 109 S. Ct. 1294, 103 L. Ed. 2d 559 (1989); *Supreme Court of New Hampshire v. Piper*, 470 U.S. 274, 105 S. Ct. 1272, 84 L. Ed. 2d 205 (1985); *Connecticut ex rel. Blumenthal v. Crotty*, 346 F.3d 84, 31 A.L.R.6th 763 (2d Cir. 2003).
- 12 *Lunding v. New York Tax Appeals Tribunal*, 522 U.S. 287, 118 S. Ct. 766, 139 L. Ed. 2d 717 (1998); *Toomer v. Witsell*, 334 U.S. 385, 68 S. Ct. 1156, 92 L. Ed. 1460 (1948); *Marilley v. Bonham*, 844 F.3d 841 (9th Cir. 2016); *Peterson v. LaCabe*, 783 F. Supp. 2d 1167 (D. Colo. 2011), *aff'd on other grounds*, 707 F.3d 1197 (10th Cir. 2013); *Clement v. Durban*, 147 A.D.3d 39, 43 N.Y.S.3d 515 (2d Dep't 2016), *aff'd*, 32 N.Y.3d 337, 91 N.Y.S.3d 342, 115 N.E.3d 614 (2018), *cert. denied*, 139 S. Ct. 2649, 204 L. Ed. 2d 285 (2019).

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16B Am. Jur. 2d Constitutional Law § 799

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Constitutional Law

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XII. Privileges and Immunities of Citizenship

B. Privileges and Immunities of Citizens of the Several States: Protection Guaranteed by Article IV of the Federal Constitution

5. Justification for Discrimination

§ 799. Sufficiency of particular justifications for discrimination under Article IV

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  2945, 2950

For purposes of the Privileges and Immunities Clause of [Article IV of the United States Constitution](#),¹ a bona fide residence requirement for the receipt of state services, appropriately defined and uniformly applied, furthers the substantial state interest in assuring that services provided for its residents are enjoyed only by residents.² When a statute imposes restrictions on a state's expenditure of its own funds to residents, courts will grant deference to the state's funding determinations.³ It has been held reasonable under the facts of particular cases for—

— a city to limit on-street handicap parking to those who lived, studied, or conducted business in the city because they have the most pressing needs for such parking.⁴

— a state to prohibit nonresidents from obtaining a firearms license because of the need to monitor license holders.⁵

— a state to grant military service credit to residents only to express its gratitude to its residents who entered their country's service in time of war and to compensate them for the disruption of their way of life and, in many cases, of their employment.⁶ On the other hand, expediency, convenience, or ease of administration or enforcement does not justify infringement of privileges and immunities.⁷ The assumption that a state may validly attempt to alleviate its unemployment problems by requiring private employers within the state to discriminate against nonresidents is dubious.⁸ Likewise, promoting economic development in the

state directly and indirectly and sending state funds to state taxpayers is a dubious reason for a law disadvantaging nonresident contractors bidding on state contracts.⁹

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Footnotes

- 1 U.S. Const. Art. IV, § 2, cl. 1.
- 2 *Thorpe v. State*, 107 P.3d 1064 (Colo. App. 2004).
- 3 *United Bldg. and Const. Trades Council of Camden County and Vicinity v. Mayor and Council of City of Camden*, 465 U.S. 208, 104 S. Ct. 1020, 79 L. Ed. 2d 249 (1984); *Toomer v. Witsell*, 334 U.S. 385, 68 S. Ct. 1156, 92 L. Ed. 1460 (1948).
- 4 *Meekins v. City of New York, N.Y.*, 524 F. Supp. 2d 402 (S.D. N.Y. 2007).
- 5 *Bach v. Pataki*, 408 F.3d 75 (2d Cir. 2005).
- 6 *Devereaux v. New York State Teachers' Retirement Bd.*, 75 A.D.2d 277, 429 N.Y.S.2d 743 (3d Dep't 1980).
- 7 *Connecticut ex rel. Blumenthal v. Crotty*, 346 F.3d 84, 31 A.L.R.6th 763 (2d Cir. 2003).
- 8 *Hicklin v. Orbeck*, 437 U.S. 518, 98 S. Ct. 2482, 57 L. Ed. 2d 397 (1978); *A.L. Blades & Sons, Inc. v. Yerusalim*, 121 F.3d 865 (3d Cir. 1997).
- 9 *A.L. Blades & Sons, Inc. v. Yerusalim*, 121 F.3d 865 (3d Cir. 1997); *C.S. McCrossan Const., Inc. v. Rahn*, 96 F. Supp. 2d 1238 (D.N.M. 2000).

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16B Am. Jur. 2d Constitutional Law § 800

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XII. Privileges and Immunities of Citizenship

B. Privileges and Immunities of Citizens of the Several States: Protection Guaranteed by Article IV of the Federal Constitution

6. Application of Article IV to Particular Matters

§ 800. Application of Article IV to taxation

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  2952

A.L.R. Library

[Validity of municipal ordinance imposing income tax or license upon nonresidents employed in taxing jurisdiction \(commuter tax\), 48 A.L.R.3d 343](#)

One right secured by the Privileges and Immunities Clause of [Article IV of the United States Constitution](#)¹ is the right of a citizen of any state to remove to and carry on business in another state without being subjected in property or person to taxes more onerous than the citizens of the other state are subjected to.² Nonetheless, as a practical matter, [Article IV](#) affords no assurance of precise equality in taxation between residents and nonresidents of a particular state.³ Some differences may be inherent in any taxing scheme, given that, like many other constitutional provisions, the Privileges and Immunities Clause of [Article IV](#) is not an absolute, and that absolute equality is impracticable in taxation.⁴ Since state legislatures must draw some distinctions in light of local needs, they have considerable discretion in formulating tax policy.⁵ Thus, where the question is whether a state taxing law contravenes rights secured by the Federal Constitution, the decision must depend not on any mere question of form, construction, or definition but on the practical operation and effect of the tax imposed.⁶ In short, inequalities that result not from hostile discrimination but occasionally and incidentally in the application of a tax system that is not arbitrary in its

classification are not sufficient to defeat a law on [Article IV](#) grounds.⁷ [Article IV](#) requires "substantial equality" of treatment for both residents and nonresidents of the taxing state.⁸

[Article IV](#) prohibits a state from denying nonresidents a general tax exemption provided to residents.⁹ States, however, are not required by [Article IV](#) to allow nonresidents a deduction for all manner of personal expenses, such as taxes paid to other states or mortgage interest relating to an out-of-state residence.¹⁰ Nor must they invariably provide to nonresidents the same manner of tax credits available to residents.¹¹ States may limit nonresidents' deductions of business expenses and nonbusiness deductions based on the relationship between those expenses and in-state property or income.¹² States thus may effectively limit nonresidents' deduction of certain personal expenses based on a reason as simple as the fact that those expenses are clearly related to residence in another state.¹³

While states have a considerable amount of leeway in aligning the tax burden of nonresidents to in-state activities, this does not mean that states can categorically deny personal deductions to a nonresident taxpayer without a substantial justification for the difference in treatment, on the assumption that the deductions are inevitably allocable to the state in which the taxpayer resides.¹⁴ Moreover, merely because an expense is personal in nature does not mean a state may ignore the impact of disallowing nonresidents a deduction for it.¹⁵

When a tax or fee that differentiates between residents and nonresidents is rationally related to a valid state purpose, mere inequality in a given year will not necessarily violate [Article IV](#).¹⁶

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Footnotes

- 1 U.S. Const. Art. IV, § 2, cl. 1.
- 2 [Lunding v. New York Tax Appeals Tribunal](#), 522 U.S. 287, 118 S. Ct. 766, 139 L. Ed. 2d 717 (1998); [Shaffer v. Carter](#), 252 U.S. 37, 40 S. Ct. 221, 64 L. Ed. 445 (1920); [Wirth v. Com.](#), 626 Pa. 124, 95 A.3d 822 (2014).
- 3 [Lunding v. New York Tax Appeals Tribunal](#), 522 U.S. 287, 118 S. Ct. 766, 139 L. Ed. 2d 717 (1998); [Wirth v. Com.](#), 626 Pa. 124, 95 A.3d 822 (2014).
- 4 [Lunding v. New York Tax Appeals Tribunal](#), 522 U.S. 287, 118 S. Ct. 766, 139 L. Ed. 2d 717 (1998).
- 5 [Lunding v. New York Tax Appeals Tribunal](#), 522 U.S. 287, 118 S. Ct. 766, 139 L. Ed. 2d 717 (1998); [Madden v. Commonwealth of Kentucky](#), 309 U.S. 83, 60 S. Ct. 406, 84 L. Ed. 590, 125 A.L.R. 1383 (1940).
- 6 [Lunding v. New York Tax Appeals Tribunal](#), 522 U.S. 287, 118 S. Ct. 766, 139 L. Ed. 2d 717 (1998); [Shaffer v. Carter](#), 252 U.S. 37, 40 S. Ct. 221, 64 L. Ed. 445 (1920).
- 7 [Lunding v. New York Tax Appeals Tribunal](#), 522 U.S. 287, 118 S. Ct. 766, 139 L. Ed. 2d 717 (1998).
- 8 [Lunding v. New York Tax Appeals Tribunal](#), 522 U.S. 287, 118 S. Ct. 766, 139 L. Ed. 2d 717 (1998); [Austin v. New Hampshire](#), 420 U.S. 656, 95 S. Ct. 1191, 43 L. Ed. 2d 530 (1975); [Moro v. State](#), 357 Or. 167, 351 P.3d 1 (2015).
- 9 [Austin v. New Hampshire](#), 420 U.S. 656, 95 S. Ct. 1191, 43 L. Ed. 2d 530 (1975); [Travis v. Yale & Towne Mfg. Co.](#), 252 U.S. 60, 40 S. Ct. 228, 64 L. Ed. 460 (1920).
- 10 [Lunding v. New York Tax Appeals Tribunal](#), 522 U.S. 287, 118 S. Ct. 766, 139 L. Ed. 2d 717 (1998).
- 11 [Lunding v. New York Tax Appeals Tribunal](#), 522 U.S. 287, 118 S. Ct. 766, 139 L. Ed. 2d 717 (1998).
- 12 [Travis v. Yale & Towne Mfg. Co.](#), 252 U.S. 60, 40 S. Ct. 228, 64 L. Ed. 460 (1920); [Shaffer v. Carter](#), 252 U.S. 37, 40 S. Ct. 221, 64 L. Ed. 445 (1920).
- 13 [Lunding v. New York Tax Appeals Tribunal](#), 522 U.S. 287, 118 S. Ct. 766, 139 L. Ed. 2d 717 (1998).
- 14 [Lunding v. New York Tax Appeals Tribunal](#), 522 U.S. 287, 118 S. Ct. 766, 139 L. Ed. 2d 717 (1998).
- 15 [Lunding v. New York Tax Appeals Tribunal](#), 522 U.S. 287, 118 S. Ct. 766, 139 L. Ed. 2d 717 (1998).
- 16 [State, Commercial Fisheries Entry Com'n v. Carlson](#), 191 P.3d 137 (Alaska 2008).

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16B Am. Jur. 2d Constitutional Law § 801

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XII. Privileges and Immunities of Citizenship

B. Privileges and Immunities of Citizens of the Several States: Protection Guaranteed by Article IV of the Federal Constitution

6. Application of Article IV to Particular Matters

§ 801. Application of Article IV to pursuit of profession or occupation

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  2953, 2958

The right to practice a trade, profession, or common calling, such as medicine¹ or the insurance trade,² is a right recognized as fundamental and protected under the Privileges and Immunities Clause of Article IV³ of the United States Constitution.⁴ In other words, one of the privileges which Article IV guarantees to citizens of one state is that of doing business in another state on terms of substantial equality with the citizens of that state.⁵ Accordingly, Article IV generally protects the right of citizens who live in one state to work in another state without discrimination.⁶ Although article IV forbids a state from intentionally giving its own citizens a competitive advantage in business or employment,⁷ it does not require that a state tailor its every action to avoid any incidental effect on out-of-state tradesmen.⁸

A state, for Article IV purposes, cannot ordinarily condition a professional license on residency within a state.⁹ Furthermore, a small occupational fee can offend Article IV if the facts indicate that the fee is imposed for no other purpose than to impose a heavier burden on nonresidents.¹⁰

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Footnotes

¹ [Ramos v. Puerto Rico Medical Examining Bd.](#), 491 F. Supp. 2d 238 (D.P.R. 2007).

2 Council of Ins. Agents & Brokers v. Molasky-Arman, 522 F.3d 925 (9th Cir. 2008); Council of Ins. Agents
± Brokers v. Viken, 2005 DSD 21, 408 F. Supp. 2d 836 (D.S.D. 2005).
3 U.S. Const. Art. IV, § 2, cl. 1.
4 *McBurney v. Young*, 569 U.S. 221, 133 S. Ct. 1709, 185 L. Ed. 2d 758 (2013); *Jones v. City of Memphis*,
868 F. Supp. 2d 710 (W.D. Tenn. 2012), *aff'd*, 531 Fed. Appx. 709 (6th Cir. 2013).
5 *Toomer v. Witsell*, 334 U.S. 385, 68 S. Ct. 1156, 92 L. Ed. 1460 (1948); Council of Ins. Agents & Brokers
v. Molasky-Arman, 522 F.3d 925 (9th Cir. 2008).
6 *Matter of Overall*, 456 Md. 525, 175 A.3d 666 (2017).
7 *McBurney v. Young*, 569 U.S. 221, 133 S. Ct. 1709, 185 L. Ed. 2d 758 (2013).
8 *McBurney v. Young*, 569 U.S. 221, 133 S. Ct. 1709, 185 L. Ed. 2d 758 (2013).
9 Council of Insurance Agents ± Brokers v. Gallagher, 287 F. Supp. 2d 1302 (N.D. Fla. 2003).
10 *Seibert v. Clark*, 619 A.2d 1108 (R.I. 1993).

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16B Am. Jur. 2d Constitutional Law § 802

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XII. Privileges and Immunities of Citizenship

B. Privileges and Immunities of Citizens of the Several States: Protection Guaranteed by Article IV of the Federal Constitution

6. Application of Article IV to Particular Matters

§ 802. Application of Article IV to pursuit of profession or occupation—Practice of law

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  2955, 2956

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[Validity and construction of statutes or rules conditioning right to practice law upon residence or citizenship, 53 A.L.R.3d 1163](#)

[Validity, under Federal Constitution, of state bar examination procedures, 30 A.L.R. Fed. 934](#)

The practice of law is a fundamental right protected by the Privileges and Immunities Clause of Article IV¹ of the United States Constitution,² and a rule requiring members of a state bar to reside within the state is unconstitutional under Article IV.³ Thus, a rule requiring that applicants for admission to practice law in a particular place must reside therein for one year prior to applying for admission to practice is invalid.⁴ Similarly, a state's requirement that an applicant for admission to the bar "on motion" be a permanent resident of the state has been held to violate Article IV.⁵ Reasons such as suppositions that nonresidents would be less likely to become and remain familiar with local rules and procedures, to behave ethically, to be available for court proceedings, and to do pro bono and other volunteer work, do not meet the test of substantiality required by Article IV to justify discrimination against nonresidents with regard to admission to a state bar.⁶

The requirement of taking and passing a bar exam before an individual may engage in the practice of law, in light of its universality, has a close or substantial relationship to a state's legitimate objective of keeping up the quality of its bar and, while alternative methods of keeping up that quality can easily be imagined, the bar examination requirement does not violate Article IV.⁷ Also, without violating Article IV, a state may require that all attorneys admitted to practice therein maintain an office within the state,⁸ even if they reside outside the state, inasmuch as such a requirement does not impose different or additional burdens on nonresident attorneys.⁹

No state can prohibit a citizen with a federal claim or defense from engaging an out-of-state lawyer to collaborate with an in-state lawyer and give legal advice concerning it within the state.¹⁰

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Footnotes

- 1 U.S. Const. Art. IV, § 2, cl. 1.
- 2 National Ass'n for the Advancement of Multijurisdiction Practice v. Castille, 799 F.3d 216 (3d Cir. 2015); National Ass'n for the Advancement of Multijurisdiction Practice v. Berch, 773 F.3d 1037 (9th Cir. 2014); Coffman v. Williamson, 2015 CO 35, 348 P.3d 929 (Colo. 2015).
- 3 Supreme Court of New Hampshire v. Piper, 470 U.S. 274, 105 S. Ct. 1272, 84 L. Ed. 2d 205 (1985).
- 4 Barnard v. Thorstenn, 489 U.S. 546, 109 S. Ct. 1294, 103 L. Ed. 2d 559 (1989).
- 5 Supreme Court of Virginia v. Friedman, 487 U.S. 59, 108 S. Ct. 2260, 101 L. Ed. 2d 56 (1988); Sommermeyer v. Supreme Court of the State of Wyo., 871 F.2d 111 (10th Cir. 1989).
- 6 Supreme Court of New Hampshire v. Piper, 470 U.S. 274, 105 S. Ct. 1272, 84 L. Ed. 2d 205 (1985).
- 7 Sestric v. Clark, 765 F.2d 655 (7th Cir. 1985); Kirkpatrick v. Shaw, 70 F.3d 100 (11th Cir. 1995).
- 8 Schoenefeld v. Schneiderman, 821 F.3d 273 (2d Cir. 2016); Matter of Arthur, 415 N.W.2d 168 (Iowa 1987); In re Estate of Garrasi, 29 Misc. 3d 822, 907 N.Y.S.2d 821 (Sur. Ct. 2010).
- 9 Tolchin v. Supreme Court of the State of N.J., 111 F.3d 1099 (3d Cir. 1997); Kleinsmith v. Shurtleff, 571 F.3d 1033 (10th Cir. 2009).
- 10 Spanos v. Skouras Theatres Corp., 364 F.2d 161, 10 Fed. R. Serv. 2d 1601, 10 Fed. R. Serv. 2d 1606 (2d Cir. 1966).

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16B Am. Jur. 2d Constitutional Law § 803

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XII. Privileges and Immunities of Citizenship

B. Privileges and Immunities of Citizens of the Several States: Protection Guaranteed by Article IV of the Federal Constitution

6. Application of Article IV to Particular Matters

§ 803. Application of Article IV to pursuit of profession or occupation—Public works contracts

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  2950

Under the Privileges and Immunities Clause of [Article IV of the United States Constitution](#),¹ one factor in evaluating whether a state's discriminatory action can be constitutionally justified is the state's proprietary interest in the activity; a "proprietary interest" can arise from expenditure of state funds, such as funding a public works project.² The fact that legislation involves a state in its proprietary capacity, however, is not sufficient to justify discrimination against nonresidents that is prohibited by [Article IV](#).³ Although direct public employment on a public works project—that is, when the state imposes restriction on its own hiring practice—is not an actionable right under Article IV,⁴ an out-of-state resident's interest in employment by private employers on public works projects in another state is sufficiently fundamental to the promotion of interstate harmony and sufficiently basic to the livelihood of the nation as to fall within the purview of [Article IV](#).⁵ Justification for laws discriminating against nonresidents in the hiring of employees on public works projects will be required, and the court will grant deference to the state's funding determinations.⁶ Justification, however, frequently has been found lacking.⁷ A preference to residents on public work projects has been held proper in order to relieve local unemployment and encourage local industry.⁸

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Footnotes

¹ U.S. Const. Art. IV, § 2, cl. 1.

² *People ex rel. Bernardi v. Leary Const. Co., Inc.*, 102 Ill. 2d 295, 80 Ill. Dec. 36, 464 N.E.2d 1019 (1984).

- 3 People ex rel. Bernardi v. Leary Const. Co., Inc., 102 Ill. 2d 295, 80 Ill. Dec. 36, 464 N.E.2d 1019 (1984);
Laborers Local Union No. 374 v. Felton Const. Co., 98 Wash. 2d 121, 654 P.2d 67, 36 A.L.R.4th 926 (1982).
4 A.L. Blades & Sons, Inc. v. Yerusalim, 121 F.3d 865 (3d Cir. 1997).
5 United Bldg. and Const. Trades Council of Camden County and Vicinity v. Mayor and Council of City of
Camden, 465 U.S. 208, 104 S. Ct. 1020, 79 L. Ed. 2d 249 (1984); Hicklin v. Orbeck, 437 U.S. 518, 98 S.
Ct. 2482, 57 L. Ed. 2d 397 (1978).
6 A.L. Blades & Sons, Inc. v. Yerusalim, 121 F.3d 865 (3d Cir. 1997).
7 A.L. Blades & Sons, Inc. v. Yerusalim, 121 F.3d 865 (3d Cir. 1997).
8 State v. Antonich, 694 P.2d 60 (Wyo. 1985).

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16B Am. Jur. 2d Constitutional Law § 804

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XII. Privileges and Immunities of Citizenship

B. Privileges and Immunities of Citizens of the Several States: Protection Guaranteed by Article IV of the Federal Constitution

6. Application of Article IV to Particular Matters

§ 804. Application of Article IV to access to courts

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 🔑 2961 to 2963

The right to access the courts is a fundamental right protected by the Privileges and Immunities Clause of Article IV¹ of the United States Constitution.² Article IV, in other words, secures the citizens of one state the right to resort to the courts of another, equally with the citizens of the latter state.³ A state therefore may not deny access to its courts of general jurisdiction to a resident of another state,⁴ even if the suit is one to recover under a federal statute brought under a federal law.⁵

Article IV does not require states to erase any distinction between citizens and noncitizens that might conceivably give state citizens some detectable litigation advantage;⁶ rather, the constitutional requirement is satisfied if the nonresident is given access to the courts of the state upon terms that in themselves are reasonable and adequate for the enforcing of any rights the nonresident may have, even though they may not be technically and precisely the same in extent as those accorded to residents.⁷ For example, a rule requiring nonresident plaintiffs to file bonds for costs has been held not to violate Article IV.⁸ Likewise, borrowing statutes have been held not unconstitutional merely because they provide nonresidents with a different statute of limitations than residents.⁹

A state long-arm statute does not violate Article IV by prohibiting nonresidents not doing business in the state to sue a nonresident corporation doing business in the state.¹⁰

Observation:

In 1929, the U.S. Supreme Court upheld a New York forum non conveniens statute, which New York's courts had construed to allow a court in its discretion to dismiss an action by a resident of another state, but not an action brought by a New York resident.¹¹ The Court held that the statute did not violate Article IV because discrimination on the basis of residency in matters of court access—as opposed to discrimination based on citizenship—was reasonable.¹² Although modern privileges and immunities law has evolved and the distinction between residents and citizens is in disfavor, at least one modern court has upheld a forum non conveniens statute discriminating against residents but not citizens on the basis that the Supreme Court's 1929 decision was never expressly overruled.¹³

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Footnotes

- 1 U.S. Const. Art. IV, § 2, cl. 1.
- 2 *State of Mo. ex rel. Southern Ry. Co. v. Mayfield*, 340 U.S. 1, 71 S. Ct. 1, 95 L. Ed. 3 (1950); *Chambers v. Baltimore & O.R. Co.*, 207 U.S. 142, 28 S. Ct. 34, 52 L. Ed. 143 (1907); *Blake v. McClung*, 172 U.S. 239, 19 S. Ct. 165, 43 L. Ed. 432 (1898); *Slaughter-House Cases*, 83 U.S. 36, 21 L. Ed. 394, 1872 WL 15386 (1872); *Jones v. City of Memphis*, 868 F. Supp. 2d 710 (W.D. Tenn. 2012), *aff'd*, 531 Fed. Appx. 709 (6th Cir. 2013).
- 3 *McBurney v. Young*, 569 U.S. 221, 133 S. Ct. 1709, 185 L. Ed. 2d 758 (2013).
- 4 *Morris v. Crown Equipment Corp.*, 219 W. Va. 347, 633 S.E.2d 292 (2006).
- 5 *McKnett v. St. Louis & S.F. Ry. Co.*, 292 U.S. 230, 54 S. Ct. 690, 78 L. Ed. 1227 (1934).
- 6 *McBurney v. Young*, 569 U.S. 221, 133 S. Ct. 1709, 185 L. Ed. 2d 758 (2013).
- 7 *McBurney v. Young*, 569 U.S. 221, 133 S. Ct. 1709, 185 L. Ed. 2d 758 (2013); *Canadian Northern Ry. Co. v. Eggen*, 252 U.S. 553, 40 S. Ct. 402, 64 L. Ed. 713 (1920).
- 8 *Blake v. McClung*, 172 U.S. 239, 19 S. Ct. 165, 43 L. Ed. 432 (1898); *Brewster v. North Am. Van Lines, Inc.*, 461 F.2d 649, 16 Fed. R. Serv. 2d 175 (7th Cir. 1972).
- 9 *Canadian Northern Ry. Co. v. Eggen*, 252 U.S. 553, 40 S. Ct. 402, 64 L. Ed. 713 (1920); *Helinski v. Appleton Papers*, 952 F. Supp. 266 (D. Md. 1997), *aff'd*, 139 F.3d 891 (4th Cir. 1998); *Bennett v. Hannelore Enterprises, Ltd.*, 296 F. Supp. 2d 406 (E.D. N.Y. 2003).
- 10 *Delgado v. Reef Resort Ltd.*, 364 F.3d 642, 58 Fed. R. Serv. 3d 327 (5th Cir. 2004).
- 11 *Douglas v. New York, N.H. & H.R. Co.*, 279 U.S. 377, 49 S. Ct. 355, 73 L. Ed. 747 (1929).
- 12 *Douglas v. New York, N.H. & H.R. Co.*, 279 U.S. 377, 49 S. Ct. 355, 73 L. Ed. 747 (1929).
- 13 *Owens Corning v. Carter*, 997 S.W.2d 560 (Tex. 1999).

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16B Am. Jur. 2d Constitutional Law § 805

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XII. Privileges and Immunities of Citizenship

B. Privileges and Immunities of Citizens of the Several States: Protection Guaranteed by Article IV of the Federal Constitution

6. Application of Article IV to Particular Matters

§ 805. Application of Article IV to education

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  2950

The Privileges and Immunities Clause of [Article IV of the United States Constitution](#)¹ does not guarantee nonresidents the right to attend state schools or to obtain scholarships or student loans on the same basis as residents, given that the schools are largely funded by residents.² Therefore, charging nonresidents higher tuition fees for attending a publicly supported school or university does not violate the privileges and immunities of such nonresidents.³

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Footnotes

- 1 U.S. Const. Art. IV, § 2, cl. 1.
- 2 [American Commuters Ass'n v. Levitt](#), 279 F. Supp. 40 (S.D. N.Y. 1967), judgment aff'd, 405 F.2d 1148 (2d Cir. 1969).
- 3 [Arizona Bd. of Regents v. Harper](#), 108 Ariz. 223, 495 P.2d 453, 56 A.L.R.3d 627 (1972); [Kirk v. Board of Regents of University of Cal.](#), 273 Cal. App. 2d 430, 78 Cal. Rptr. 260 (1st Dist. 1969).

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16B Am. Jur. 2d Constitutional Law § 806

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XII. Privileges and Immunities of Citizenship

B. Privileges and Immunities of Citizens of the Several States: Protection Guaranteed by Article IV of the Federal Constitution

6. Application of Article IV to Particular Matters

§ 806. Application of Article IV to rights involving recreational matters

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  2950, 2959

A.L.R. Library

[Validity, Construction, and Application of State Statutes Prohibiting, Limiting, or Regulating Fishing or Hunting in State by Nonresidents, 31 A.L.R.6th 523](#)

Discrimination against nonresidents in matters involving recreational hunting and fishing has been upheld against challenges under the Privileges and Immunities Clause of [Article IV of the United States Constitution](#)¹ given the states' interest in protecting their natural resources.²

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Footnotes

- ¹ [U.S. Const. Art. IV, § 2, cl. 1.](#)
- ² [Baldwin v. Fish and Game Commission of Montana, 436 U.S. 371, 98 S. Ct. 1852, 56 L. Ed. 2d 354 \(1978\)](#) (elk hunting); [Minnesota ex rel. Hatch v. Hoeven, 456 F.3d 826 \(8th Cir. 2006\)](#) (waterfowl and pheasant hunting).

hunting); [Terk v. Ruch](#), 655 F. Supp. 205 (D. Colo. 1987) (bighorn sheep and Rocky Mountain goat hunting); [Northwest Gillnetters Ass'n v. Sandison](#), 95 Wash. 2d 638, 628 P.2d 800 (1981) (sport fishing).

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XII. Privileges and Immunities of Citizenship

C. Privileges and Immunities of National Citizenship: Protection Guaranteed by 14th Amendment

[Topic Summary](#) | [Correlation Table](#)

Research References

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 🔑 2910 to 2916

A.L.R. Library

A.L.R. Index, Privileges and Immunities

West's A.L.R. Digest, [Constitutional Law](#) 🔑 2910 to 2916

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16B Am. Jur. 2d Constitutional Law § 807

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XII. Privileges and Immunities of Citizenship

C. Privileges and Immunities of National Citizenship: Protection Guaranteed by 14th Amendment

1. In General

§ 807. Purpose of Privileges and Immunities Clause of 14th Amendment

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 🔑 2910

The national Privileges and Immunities Clause of the 14th Amendment to the United States Constitution¹ is to be distinguished from the Privileges and Immunities Clause of Article IV of the Constitution,² the former having been adopted primarily to protect the newly freed slaves from oppression at the hands of state governments in the South.³ The objective of the clause of the 14th Amendment was to preserve equality of rights and to prevent discrimination between citizens but not radically to change the whole theory of the relations of the state and federal governments to each other and of both governments to the people.⁴ It was not the purpose of the 14th Amendment clause to transfer from the states to the federal government the security and protection of those civil rights that inhere in state citizenship⁵ or to confer upon Congress power to legislate within the domain of state legislation.⁶ This provision seeks, as does Article IV's clause, to prevent an exercise of the independent power left to each state in favor of its own citizens in respect to their common personal rights as citizens and against a participation in the same rights by citizens of other states.⁷

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¹ U.S. Const. Amend. XIV, § 1.

² U.S. Const. Art. IV, § 2, cl. 1.

As to the Privileges and Immunities Clause of Article IV, see §§ [786](#) to [806](#).

- 3 *Salla v. Monroe County*, 48 N.Y.2d 514, 423 N.Y.S.2d 878, 399 N.E.2d 909 (1979).
4 *McPherson v. Blacker*, 146 U.S. 1, 13 S. Ct. 3, 36 L. Ed. 869 (1892).
5 *Maxwell v. Bugbee*, 250 U.S. 525, 40 S. Ct. 2, 63 L. Ed. 1124 (1919).
6 *Wilkerson v. Rahrer*, 140 U.S. 545, 11 S. Ct. 865, 35 L. Ed. 572 (1891).
7 *State v. Travelers' Ins. Co.*, 73 Conn. 255, 47 A. 299 (1900), *aff'd*, 185 U.S. 364, 22 S. Ct. 673, 46 L. Ed. 949 (1902).

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16B Am. Jur. 2d Constitutional Law § 808

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XII. Privileges and Immunities of Citizenship

C. Privileges and Immunities of National Citizenship: Protection Guaranteed by 14th Amendment

1. In General

§ 808. Effect of Privileges and Immunities Clause of 14th Amendment

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  2910

The Privileges and Immunities Clause of the 14th Amendment¹ makes the fundamental rights, privileges, and immunities that belong to a citizen of the United States independent of that person's citizenship in any state,² prohibits discriminating legislation by one state against the citizens of another, and secures to all the equal protection of the laws.³ It places the privileges and immunities of citizens of the United States under the protection of the Federal Constitution and leaves the privileges and immunities of citizens of a state under the protection of the state constitution.⁴ It bridges the gap left by the Privileges and Immunities Clause of Article IV of the Constitution,⁵ so as also to safeguard citizens of the United States against any legislation of their own states having the effect of denying equality of treatment in respect of the exercise of their privileges of national citizenship in other states.⁶ Under the 14th Amendment clause, the simple inquiry is whether the privilege claimed is one which arises by virtue of national citizenship.⁷ If the privilege is of that character, no state can abridge it.⁸

The 14th Amendment clause does not add to the privileges or immunities of citizenship in the United States;⁹ it merely furnishes guarantees additional to those that already existed.¹⁰ The 14th Amendment clause affords no protection to any citizen when Congress itself has imposed or authorized the infringement.¹¹

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Footnotes

- 1 U.S. Const. Amend. XIV, § 1.
- 2 *Twining v. State of N.J.*, 211 U.S. 78, 29 S. Ct. 14, 53 L. Ed. 97 (1908) (overruled in part on other grounds by, *Malloy v. Hogan*, 378 U.S. 1, 84 S. Ct. 1489, 12 L. Ed. 2d 653 (1964)); *Slaughter-House Cases*, 83 U.S. 36, 21 L. Ed. 394, 1872 WL 15386 (1872).
- 3 *State v. Travelers' Ins. Co.*, 73 Conn. 255, 47 A. 299 (1900), *aff'd*, 185 U.S. 364, 22 S. Ct. 673, 46 L. Ed. 949 (1902).
As to equal protection, see §§ 817 to 932.
- 4 *Maxwell v. Bugbee*, 250 U.S. 525, 40 S. Ct. 2, 63 L. Ed. 1124 (1919).
- 5 U.S. Const. Art. IV, § 2, cl. 1.
As to the Privileges and Immunities Clause of Article IV, see §§ 786 to 806.
- 6 *Colgate v. Harvey*, 296 U.S. 404, 56 S. Ct. 252, 80 L. Ed. 299, 102 A.L.R. 54 (1935) (overruled in part on other grounds by, *Madden v. Commonwealth of Kentucky*, 309 U.S. 83, 60 S. Ct. 406, 84 L. Ed. 590, 125 A.L.R. 1383 (1940)).
- 7 *Colgate v. Harvey*, 296 U.S. 404, 56 S. Ct. 252, 80 L. Ed. 299, 102 A.L.R. 54 (1935) (overruled in part on other grounds by, *Madden v. Commonwealth of Kentucky*, 309 U.S. 83, 60 S. Ct. 406, 84 L. Ed. 590, 125 A.L.R. 1383 (1940)).
- 8 *Colgate v. Harvey*, 296 U.S. 404, 56 S. Ct. 252, 80 L. Ed. 299, 102 A.L.R. 54 (1935) (overruled in part on other grounds by, *Madden v. Commonwealth of Kentucky*, 309 U.S. 83, 60 S. Ct. 406, 84 L. Ed. 590, 125 A.L.R. 1383 (1940)).
- 9 *Twining v. State of N.J.*, 211 U.S. 78, 29 S. Ct. 14, 53 L. Ed. 97 (1908) (overruled in part on other grounds by, *Malloy v. Hogan*, 378 U.S. 1, 84 S. Ct. 1489, 12 L. Ed. 2d 653 (1964)).
- 10 *U.S. v. Cruikshank*, 92 U.S. 542, 23 L. Ed. 588, 1875 WL 17550 (1875).
- 11 *In re Storer*, 58 F.3d 1125, 1995 FED App. 0206P (6th Cir. 1995) (holding that an Ohio statute denying Ohio debtors the right to use federal bankruptcy exemptions did not violate the Privileges and Immunities Clause, since the Ohio statute was enacted pursuant to authority granted in the Bankruptcy Code "opt-out" provision, which gives states the authority to deny their citizens the ability to use the federal exemption scheme).

16B Am. Jur. 2d Constitutional Law § 809

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XII. Privileges and Immunities of Citizenship

C. Privileges and Immunities of National Citizenship: Protection Guaranteed by 14th Amendment

1. In General

§ 809. Entities subject to Privileges and Immunities Clause of 14th Amendment

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  2912, 2913

The privileges and immunities provision of the 14th Amendment¹ prohibits any act by a state that abridges the privileges and immunities of citizens of the United States, whether such act is by the legislative, executive, or judicial authorities of the state.² The prohibitions of the 14th Amendment clause extend to every department of the state and every officer or agent by whom the powers of the state are exerted.³ It applies in terms only to actions taken by states, not to those taken by the federal government.⁴ Furthermore, the prohibitions of the 14th Amendment do not apply to any actions or conduct of private individuals.⁵

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Footnotes

- ¹ U.S. Const. Amend. XIV, § 1.
- ² [Saunders v. Shaw](#), 244 U.S. 317, 37 S. Ct. 638, 61 L. Ed. 1163 (1917); [Home Tel. & Tel. Co. v. City of Los Angeles](#), 227 U.S. 278, 33 S. Ct. 312, 57 L. Ed. 510 (1913).
- ³ [Saunders v. Shaw](#), 244 U.S. 317, 37 S. Ct. 638, 61 L. Ed. 1163 (1917); [Home Tel. & Tel. Co. v. City of Los Angeles](#), 227 U.S. 278, 33 S. Ct. 312, 57 L. Ed. 510 (1913).
- ⁴ [Russell v. Hug](#), 275 F.3d 812 (9th Cir. 2002); [County of Charles Mix v. U.S. Dept. of Interior](#), 799 F. Supp. 2d 1027 (D.S.D. 2011), [aff'd](#), 674 F.3d 898 (8th Cir. 2012); [Fikre v. F.B.I.](#), 23 F. Supp. 3d 1268 (D. Or. 2014).

5 U.S. v. Wheeler, 254 U.S. 281, 41 S. Ct. 133, 65 L. Ed. 270 (1920) (disapproved of on other grounds by, U.S. v. Guest, 383 U.S. 745, 86 S. Ct. 1170, 16 L. Ed. 2d 239 (1966)); U.S. v. Harris, 106 U.S. 629, 1 S. Ct. 601, 27 L. Ed. 290 (1883).

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16B Am. Jur. 2d Constitutional Law § 810

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XII. Privileges and Immunities of Citizenship

C. Privileges and Immunities of National Citizenship: Protection Guaranteed by 14th Amendment

2. Proper Plaintiffs; Persons Whose Privileges and Immunities Are Protected by the 14th Amendment

§ 810. Entities protected by Privileges and Immunities Clause of 14th Amendment, generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  2912, 2913

The Privileges and Immunities Clause of the 14th Amendment¹ speaks in terms of "citizens of the United States" being entitled to privileges and immunities.² Natural persons, and they alone, are entitled to the privileges and immunities that the 14th Amendment secures for citizens.³ Corporations are not "citizens" within the meaning of the 14th Amendment's Privileges and Immunities Clause⁴ and therefore are not protected thereunder.⁵

Although children are "persons" for constitutional purposes⁶ and, thus, must be afforded their rights under the 14th Amendment's Privileges and Immunities Clause, the applicability of such rights to children is not without limitation, especially when a child is asserting rights in opposition to one's parent.⁷ Nonetheless, it has been held that if a child has a constitutionally protectable interest under the 14th Amendment clause, and the child is mature enough to express potentially conflicting desires, the state cannot merely presume, without some factual showing, that the child's seemingly independent acts and/or judgment are without parental consent, or, absent such consent, that they are, in the first instance, wrong.⁸

A state is not a "person" within the meaning of the privileges and immunities guarantee and therefore cannot assert a 14th Amendment privileges and immunities claim.⁹

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Footnotes

- 1 U.S. Const. Amend. XIV, § 1.
- 2 Hague v. Committee for Indus. Organization, 307 U.S. 496, 59 S. Ct. 954, 83 L. Ed. 1423 (1939).
- 3 Hague v. Committee for Indus. Organization, 307 U.S. 496, 59 S. Ct. 954, 83 L. Ed. 1423 (1939); Lone Star Sec. & Video, Inc. v. City of Los Angeles, 989 F. Supp. 2d 981 (C.D. Cal. 2013), *aff'd*, 827 F.3d 1192 (9th Cir. 2016).
- 4 Primera Iglesia Bautista Hispana of Boca Raton, Inc. v. Broward County, 450 F.3d 1295 (11th Cir. 2006); Adams Ford Belton, Inc. v. Missouri Motor Vehicle Com'n, 946 S.W.2d 199 (Mo. 1997).
- 5 Lone Star Sec. & Video, Inc. v. City of Los Angeles, 989 F. Supp. 2d 981 (C.D. Cal. 2013), *aff'd*, 827 F.3d 1192 (9th Cir. 2016).
- 6 Tinker v. Des Moines Independent Community School Dist., 393 U.S. 503, 89 S. Ct. 733, 21 L. Ed. 2d 731 (1969).
- 7 Matter of Kathie L., 100 Misc. 2d 173, 418 N.Y.S.2d 859 (Fam. Ct. 1979).
- 8 Matter of Kathie L., 100 Misc. 2d 173, 418 N.Y.S.2d 859 (Fam. Ct. 1979).
- 9 Pennsylvania v. New Jersey, 426 U.S. 660, 96 S. Ct. 2333, 49 L. Ed. 2d 124 (1976).

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16B Am. Jur. 2d Constitutional Law § 811

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Constitutional Law

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XII. Privileges and Immunities of Citizenship

C. Privileges and Immunities of National Citizenship: Protection Guaranteed by 14th Amendment

2. Proper Plaintiffs; Persons Whose Privileges and Immunities Are Protected by the 14th Amendment

§ 811. Application of Privileges and Immunities Clause of 14th Amendment to aliens

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  2912

The Privileges and Immunities Clause of the 14th Amendment¹ applies only to persons born or naturalized in the United States.² Residency in the United States is not equivalent to U.S. citizenship for 14th Amendment privileges and immunities purposes.³

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Footnotes

- ¹ U.S. Const. Amend. XIV, § 1.
- ² *Banerjee v. Roberts*, 641 F. Supp. 1093, 34 Ed. Law Rep. 758 (D. Conn. 1986) (holding that a foreign medical student who was born in India could not claim any rights of national citizenship protected by such clause).
- ³ *Banerjee v. Roberts*, 641 F. Supp. 1093, 34 Ed. Law Rep. 758 (D. Conn. 1986).

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XII. Privileges and Immunities of Citizenship

C. Privileges and Immunities of National Citizenship: Protection Guaranteed by 14th Amendment

3. Rights Protected by the Privileges and Immunities Clause of the 14th Amendment

§ 812. Rights protected by the Privileges and Immunities Clause of the 14th Amendment, generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  2914

The Privileges and Immunities Clause of the 14th Amendment¹ protects only those rights that derive from, or are incident to, United States citizenship,² which include those rights the Federal Constitution grants or the national government enables, but not those preexisting rights the Bill of Rights merely protects from federal invasion.³ It does not protect those general civil rights independent of the republic's existence,⁴ or those rights pertaining to state citizenship and derived solely from the relationship of the citizen and the citizen's state established by state law.⁵ Accordingly, the 14th Amendment protects those rights which owe their existence to the Federal government, its national character, its Constitution, or its laws,⁶ or in other words, rights of national citizenship,⁷ as distinct from the fundamental or natural rights inherent in state citizenship.⁸

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Footnotes

- ¹ U.S. Const. Amend. XIV, § 1.
- ² *Maxwell v. Bugbee*, 250 U.S. 525, 40 S. Ct. 2, 63 L. Ed. 1124 (1919) (Privileges and Immunities Clause protects rights that "arise out of the nature and essential character of the national government"); *Slaughter-House Cases*, 83 U.S. 36, 21 L. Ed. 394, 1872 WL 15386 (1872); *National Ass'n for the Advancement of*

3 Multijurisdiction Practice v. Berch, 773 F.3d 1037 (9th Cir. 2014); Manley v. Texas Southern University,
107 F. Supp. 3d 712, 325 Ed. Law Rep. 213 (S.D. Tex. 2015).
4 Maxwell v. Bugbee, 250 U.S. 525, 40 S. Ct. 2, 63 L. Ed. 1124 (1919); Slaughter-House Cases, 83 U.S. 36,
21 L. Ed. 394, 1872 WL 15386 (1872).
5 Maxwell v. Bugbee, 250 U.S. 525, 40 S. Ct. 2, 63 L. Ed. 1124 (1919); Slaughter-House Cases, 83 U.S. 36,
21 L. Ed. 394, 1872 WL 15386 (1872).
6 Manley v. Texas Southern University, 107 F. Supp. 3d 712, 325 Ed. Law Rep. 213 (S.D. Tex. 2015).
7 Courtney v. Goltz, 736 F.3d 1152 (9th Cir. 2013).
8 Barefoot v. City of Wilmington, 306 F.3d 113 (4th Cir. 2002); Michigan Corrections Organization v.
Michigan Dept. of Corrections, 774 F.3d 895 (6th Cir. 2014).
Barefoot v. City of Wilmington, 306 F.3d 113 (4th Cir. 2002).

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16B Am. Jur. 2d Constitutional Law § 813

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XII. Privileges and Immunities of Citizenship

C. Privileges and Immunities of National Citizenship: Protection Guaranteed by 14th Amendment

3. Rights Protected by the Privileges and Immunities Clause of the 14th Amendment

§ 813. Particular rights protected by the Privileges and Immunities Clause of the 14th Amendment

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  2914

Courts have recognized the following as rights of national citizenship protected by the Privileges and Immunities Clause of the 14th Amendment¹—

— the right to pass freely from state to state² and the right to select one's state of abode.³

— the right of a newly arrived citizen to the same privileges and immunities enjoyed by other citizens of the same state.⁴

— the right to vote in national elections.⁵

— the right to enter the public lands.⁶

— the right to be protected against violence while in the lawful custody of a United States marshal.⁷

— the right to inform the United States authorities of violation of its laws.⁸

— the right to carry on interstate commerce.⁹

- the right to peaceably assemble and petition for redress of grievances.¹⁰
- the right to free speech and freedom of the press.¹¹
- the privilege of the writ of habeas corpus.¹²
- the right, pursuant to federal law,¹³ of all U.S. citizens to inherit, purchase, lease, sell, hold, and convey real and personal property.¹⁴

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Footnotes

- 1 U.S. Const. Amend. XIV, § 1.
- 2 *Crandall v. State of Nevada*, 73 U.S. 35, 18 L. Ed. 745, 1867 WL 11151 (1867).
- 3 *Flowers v. Carville*, 310 F.3d 1118 (9th Cir. 2002).
- 4 *Saenz v. Roe*, 526 U.S. 489, 119 S. Ct. 1518, 143 L. Ed. 2d 689 (1999); *National Ass'n for the Advancement of Multijurisdictional Practice (NAAMJP) v. Castille*, 66 F. Supp. 3d 633 (E.D. Pa. 2014), order aff'd, 799 F.3d 216 (3d Cir. 2015).
- 5 *The Ku Klux Cases*, 110 U.S. 651, 4 S. Ct. 152, 28 L. Ed. 274 (1884).
- 6 *U.S. v. Waddell*, 112 U.S. 76, 5 S. Ct. 35, 28 L. Ed. 673 (1884).
- 7 *Logan v. U.S.*, 144 U.S. 263, 12 S. Ct. 617, 36 L. Ed. 429 (1892) (abrogated on other grounds by, *Witherspoon v. State of Ill.*, 391 U.S. 510, 88 S. Ct. 1770, 20 L. Ed. 2d 776 (1968)).
- 8 *In re Quarles*, 158 U.S. 532, 15 S. Ct. 959, 39 L. Ed. 1080 (1895).
- 9 *Crutcher v. Commonwealth*, 141 U.S. 47, 11 S. Ct. 851, 35 L. Ed. 649 (1891).
- 10 *Hague v. Committee for Indus. Organization*, 307 U.S. 496, 59 S. Ct. 954, 83 L. Ed. 1423 (1939) (the right peaceably to assemble and to discuss national legislation such as the National Labor Relations Act, and to communicate respecting it, whether orally or in writing); *U.S. v. Cruikshank*, 92 U.S. 542, 23 L. Ed. 588, 1875 WL 17550 (1875) (right peaceably to assemble for the purpose of petitioning Congress for a redress of grievances, or for anything else connected with the powers or the duties of the national government); *Slaughter-House Cases*, 83 U.S. 36, 21 L. Ed. 394, 1872 WL 15386 (1872).
- 11 *Stephens v. Stickel*, 146 Fla. 104, 200 So. 396 (1941); *Lincoln Federal Labor Union No. 19129 v. Northwestern Iron & Metal Co.*, 149 Neb. 507, 31 N.W.2d 477 (1948), aff'd, 335 U.S. 525, 69 S. Ct. 251, 93 L. Ed. 212, 6 A.L.R.2d 473 (1949); *Jones v. Memorial Hosp. System*, 677 S.W.2d 221 (Tex. App. Houston 1st Dist. 1984).
- 12 *Slaughter-House Cases*, 83 U.S. 36, 21 L. Ed. 394, 1872 WL 15386 (1872).
- 13 42 U.S.C.A. § 1982, discussed in Am. Jur. 2d, Civil Rights §§ 44 to 62.
- 14 *Oyama v. California*, 332 U.S. 633, 68 S. Ct. 269, 92 L. Ed. 249 (1948).

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XII. Privileges and Immunities of Citizenship

C. Privileges and Immunities of National Citizenship: Protection Guaranteed by 14th Amendment

3. Rights Protected by the Privileges and Immunities Clause of the 14th Amendment

§ 814. Particular rights not protected by the Privileges and Immunities Clause of the 14th Amendment

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  2914

Courts have rejected the assertion that the following rights are protected by the Privileges and Immunities Clause of the 14th Amendment¹—

— the First Amendment rights to freedom of speech, freedom of the press, freedom of assembly, and freedom of religious worship.²

— the Second Amendment right to bear arms.³

— the Fifth Amendment guaranty against prosecution, except by indictment of a grand jury.⁴

— the Fifth Amendment right against self-incrimination.⁵

— the Seventh Amendment right of trial by jury in civil cases.⁶

— the right to a bankruptcy discharge.⁷

— the right to vote for state officers or initiatives.⁸

— the right to have a federal question heard in a federal forum.⁹

— the right to pursue a particular occupation¹⁰ or to practice one's chosen profession.¹¹

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Footnotes

- 1 U.S. Const. Amend. XIV, § 1.
- 2 *Douglas v. City of Jeannette, Pa.*, 130 F.2d 652 (C.C.A. 3d Cir. 1942), judgment aff'd, 319 U.S. 157, 63 S. Ct. 877, 87 L. Ed. 1324 (1943); *Oney v. Oklahoma City*, 120 F.2d 861 (C.C.A. 10th Cir. 1941).
- 3 *Presser v. People of State of Ill.*, 116 U.S. 252, 6 S. Ct. 580, 29 L. Ed. 615 (1886).
- 4 *Hurtado v. People of State of Cal.*, 110 U.S. 516, 4 S. Ct. 111, 28 L. Ed. 232 (1884).
- 5 *Twining v. State of N.J.*, 211 U.S. 78, 29 S. Ct. 14, 53 L. Ed. 97 (1908) (overruled in part on other grounds by, *Malloy v. Hogan*, 378 U.S. 1, 84 S. Ct. 1489, 12 L. Ed. 2d 653 (1964)).
- 6 *Walker v. Sauvinet*, 92 U.S. 90, 23 L. Ed. 678, 1875 WL 17830 (1875).
- 7 *U.S. v. Kras*, 409 U.S. 434, 93 S. Ct. 631, 34 L. Ed. 2d 626 (1973); *In re Sacred Heart Hosp. of Norristown*, 133 F.3d 237 (3d Cir. 1998), as amended without opinion, (Feb. 19, 1998).
- 8 *Broyles v. Texas*, 618 F. Supp. 2d 661 (S.D. Tex. 2009), judgment aff'd, 381 Fed. Appx. 370 (5th Cir. 2010).
- 9 *Carr v. Axelrod*, 798 F. Supp. 168 (S.D. N.Y. 1992), aff'd, 996 F.2d 302 (2d Cir. 1993).
- 10 *Colon Health Centers of America, LLC v. Hazel*, 733 F.3d 535 (4th Cir. 2013).
- 11 *Morrison v. Board of Law Examiners of State of N.C.*, 453 F.3d 190 (4th Cir. 2006) (no right to carry from state to state absolute right of comity to practice profession properly subject to state regulation); *Merrifield v. Lockyer*, 547 F.3d 978 (9th Cir. 2008); *Powers v. Harris*, 379 F.3d 1208 (10th Cir. 2004).

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16B Am. Jur. 2d Constitutional Law § 815

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XII. Privileges and Immunities of Citizenship

C. Privileges and Immunities of National Citizenship: Protection Guaranteed by 14th Amendment

4. Justification for Discrimination Against Privileges and Immunities Guaranteed by 14th Amendment

§ 815. Justification for discrimination against privileges and immunities guaranteed by 14th Amendment, generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  2910, 2915

The U.S. Supreme Court has not expressly addressed what standards should be applied in assessing a purported justification for the abridgement of a privilege or immunity protected by the 14th Amendment. Justification standards are part of other 14th Amendment jurisprudence, and it may be implied that they apply in the context of the Privileges and Immunities Clause of the 14th Amendment¹ as well.²

Observation:

In its opinion striking down a residential duration requirement for eligibility for welfare benefits on 14th Amendment privileges and immunities grounds, the U.S. Supreme Court rejected asserted justifications based on the state's desire to deter welfare applicants from migrating to the state or to save money.³ The Court analyzed the state's proffered justifications in light of the type of classification made by the law, which suggests that under some circumstances it may be possible to show reasonable discrimination that is appropriately tailored to the state's goals.⁴ The Court found that the plaintiffs' need for welfare benefits was unrelated to the length of time that they had resided in the state and, thus, had no occasion to consider what weight might be given to a citizen's length of residence if the bona fides of one's claim to state citizenship were questioned.⁵ Moreover, the Court noted, because whatever benefits the plaintiffs received would be consumed while they remained in the state, there was no danger that recognition of their

claim would encourage citizens of other states to establish residency for just long enough to acquire some readily portable benefit, such as a divorce or a college education, that would be enjoyed after they return to their original domicile.⁶

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Footnotes

- 1 U.S. Const. Amend. XIV, § 1.
- 2 *Saenz v. Roe*, 526 U.S. 489, 119 S. Ct. 1518, 143 L. Ed. 2d 689 (1999).
- 3 *Saenz v. Roe*, 526 U.S. 489, 119 S. Ct. 1518, 143 L. Ed. 2d 689 (1999).
- 4 *Saenz v. Roe*, 526 U.S. 489, 119 S. Ct. 1518, 143 L. Ed. 2d 689 (1999) (Rehnquist, C.J., dissenting) (referring to "certain ill-defined circumstances" in the absence of which, under the Court's analytical framework, a state cannot classify its citizens by the length of their residence in the state without offending the Privileges and Immunities Clause).
- 5 *Saenz v. Roe*, 526 U.S. 489, 119 S. Ct. 1518, 143 L. Ed. 2d 689 (1999).
- 6 *Saenz v. Roe*, 526 U.S. 489, 119 S. Ct. 1518, 143 L. Ed. 2d 689 (1999).

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16B Am. Jur. 2d Constitutional Law § 816

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XII. Privileges and Immunities of Citizenship

C. Privileges and Immunities of National Citizenship: Protection Guaranteed by 14th Amendment

4. Justification for Discrimination Against Privileges and Immunities Guaranteed by 14th Amendment

§ 816. Police power as justification for discrimination against privileges and immunities guaranteed by 14th Amendment

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  2916

The U.S. Supreme Court has stated that constitutional amendments, including the 14th Amendment as a whole,¹ were not designed to interfere with the power of the state, sometimes termed its police power, to prescribe regulations to promote the health, peace, morals, education, and good order of the people or to legislate so as to increase the industries of the state, develop its resources, and add to its wealth and prosperity.² The Court observed that "the privileges and immunities of Federal citizenship have never been held to prevent governmental authority from placing such restraints upon the conduct or property of citizens as is necessary for the general good."³ State courts have held that the protections afforded by the Privileges and Immunities Clause of the 14th Amendment⁴ are not absolute and will yield to reasonable exercise of state police powers.⁵

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Footnotes

- ¹ § 389.
- ² [Barbier v. Connolly](#), 113 U.S. 27, 5 S. Ct. 357, 28 L. Ed. 923 (1884).
- ³ [Tiger v. Western Inv. Co.](#), 221 U.S. 286, 31 S. Ct. 578, 55 L. Ed. 738 (1911).
- ⁴ U.S. Const. Amend. XIV, § 1.

5 *Winter v. Director, Dept. of Welfare of Baltimore City*, 217 Md. 391, 143 A.2d 81 (1958); *State v. Barnes*, 232 Mont. 405, 758 P.2d 264 (1988); *Frach v. Schoettler*, 46 Wash. 2d 281, 280 P.2d 1038 (1955); *Nulter v. State Road Commission of West Virginia*, 119 W. Va. 312, 193 S.E. 549 (1937).

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